

THE PROTECTION PROJECT

JOURNAL OF HUMAN RIGHTS AND CIVIL SOCIETY



ISSUE 6

FALL 2013

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Citation Form: The *Journal* is cited as 6 THE PROTECTION PROJECT J. OF HUM. RTS AND CIV. SOC'Y. (2013)

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Welcome to the Journal

Dear Reader,

Welcome to the sixth edition of *The Protection Project Journal of Human Rights and Civil Society*. Volume six focuses on various aspects of legal education reform and corporate social responsibility.

The first article of the journal was written by Steven M. Schneebaum in preparation for a conference titled “Reforming Legal Education in the Arab World” organized by The Protection Project and the Association of Arab Universities and held in Amman, Jordan, on November 18–19, 2012. Schneebaum, a professor of law and an experienced lawyer, offers an insightful analysis of the challenges faced by legal educational institutions in reforming the curricula in accordance with the imperatives of globalization, the increasing importance of technology, and the growing need of lawyers to acquire knowledge in nonlegal fields. Schneebaum also discusses some of the lacunae of legal educational institutions in the provision of legal practical skills and in the promotion of a more egalitarian and inclusive legal profession. Schneebaum concludes by offering some concrete solutions to those problems and reminds the reader of the fundamental role played by lawyers in guaranteeing the accountability of governments and in promoting the respect of human rights.

In the second article, Stephen Hudspeth discusses best practices in clinical legal education drawn from his experience as professor at the Eugene Ludwig Community and Economic Development Clinic of the Yale Law School. Hudspeth’s detailed account of the work of the clinic highlights the importance of harnessing together students from the business, economic, and law graduate schools as a means to effectively assist smaller and bigger business clients in implementing programs that have strong social justice and community development goals.

The third article, written by Kerstin Bartsch, senior legal officer of the Permanent Bureau of the Hague Conference on Private International Law, is a fascinating legislative history overview of the work of the Hague Conference. By focusing on some key conventions dealing with the rights of vulnerable parties in divorce

proceedings and the rights of children in cases of inter-country adoption and child abduction, she discusses the travaux préparatoires and the influence of Islamic law on the drafting of those conventions. Bartsch then discusses the Malta Process and its achievements in promoting dialogue between experts of countries that are parties to the Child Abduction and Child Protection conventions and experts from countries whose legal systems are based on or influenced by Islamic law. While acknowledging the challenges of this dialogue, she concludes that cooperation is possible thanks to the neutral approach adopted by the drafters of the conventions and to the increasing connection between people from different cultural and religious backgrounds, both of which require joint efforts in private international law.

The next section of the journal focuses on Corporate Social Responsibility and presents some of the projects concluded by The Protection Project in this field. In particular, it contains the summary of the proceedings of the regional conference “Corporate Social Responsibility in the Middle East” held on June 19–20, 2013, in Istanbul, Turkey; an interview with Dina Habib Powell, global head of Corporate Engagement at Goldman Sacks; a review of the book by John Ruggie, former assistant secretary-general and chief adviser for strategic planning to United Nations Secretary-General Kofi Annan, titled *Just Business: Multinational Corporations and Human Rights*; and the first bibliography ever published about corporate social responsibility in the Middle East.

We encourage members of civil society, especially academic scholars, journalists, and nongovernmental organization representatives to contribute scholarly articles for inclusion in future editions of our journal. The topics could include legal reform, human rights education, human trafficking, corporate social responsibility, religious dialogue, civil society initiatives, and clinical legal education, all of which constitute the core work of The Protection Project.

We hope you find this edition of the journal informative.

Sincerely,



Mohamed Mattar
Executive Director
The Protection Project

Reforming Legal Education: a Practitioner's Perspective

*Steven M. Schneebaum**

There is a vast divide between the legal academy and the world of legal practice, which often seems unbridgeable in either direction. The old adage that “those who can, do; those who can’t, teach”¹ seems to have found a home in law schools around the world. This issue is not unique to a particular geographic area or a specific legal tradition.

Law faculties are not trade schools, nor are they meant to be. Yet a person must pass certain pedagogical milestones before being permitted to hold himself or herself out to the public as capable of discharging the responsibilities of a legal professional. Graduating law students must have acquired a body of knowledge and internalized patterns of thought and means of expression. Some of those things can be measured by examination, while some are more subtle and even elusive.

Many are the causes of the chasm between the spheres of legal education and legal practice. Some are purely logistical: many law faculties are understaffed and underfunded, and they simply do not have the resources to invest in the kind of personalized, intensive teaching that would be required to optimize the preparation of practitioners. In some legal regimes, practical training is expected to take place after basic educational thresholds have been crossed, which can be through a graduate degree; a specialized training facility; or a period of clerkship, articles, or internship. Often, too, students populating faculties of law have not the slightest desire or intention to practice law: they are there to acquire a certain perspective, which they plan to bring to the world of business, or to government, or to some other kind of career. To them, practice-focused courses would be an unwanted distraction.

Yet some steps might be taken to make legal education more relevant to the needs of practitioners without unduly freighting it with elements of interest to only a fraction of its consumers. First, demonstrably unsatisfactory methods of

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1 This *bon mot*, hardly beloved—for obvious reasons—by those in the teaching profession, is frequently attributed to H. L. Mencken but appears to have originated with George Bernard Shaw in his notes to *Man and Superman* (Cambridge, MA: University Press, 1903).

presenting material in classrooms, no matter how deeply embedded in tradition, can be weeded out. It is common, for example, for law teachers to present their subjects as if they constituted an arbitrary, tedious, and boring barrier that students must overcome. There is simply no reason to accept this approach to teaching, and certainly “it has always been done this way” is not an acceptable defense. That approach quite likely never worked; it will certainly not work in today’s interconnected and high-tech world.

Rote learning, memorization, and repetition may have their place in certain contexts, but as a default means of education, they possess almost no utility for any student, whether a budding lawyer or not. The clichéd goal of law professors to teach “how to think like a lawyer” is often challenged by students who are all too well aware that those teaching them are not, in fact, lawyers, at least if by that term one means people who earn their living by practicing their profession, advising clients, drafting legal documents, or appearing in court. Moreover, there is no clear connection between listening to hours and hours of lectures and acquiring and assimilating any particular habits of thought.

This article asks—and with diffidence proposes answers to—seven questions as starting points for analyzing whether there is a legal education model that can be anchored in the real world of people, businesses, and government, while remaining true to the philosophical and logical underpinnings of critical legal concepts that law students must learn and know, as well as taking account of the practical constraints that law teachers are destined to face.

I must begin with a personal note. I am a professional lawyer, not a professional educator.² My perspective is different from that of men and women who are learned in the law and whose primary mission is passing on a set of skills or a compendium of knowledge. As a practitioner of international law in the United States, I have had opportunities to observe the legal systems of other countries, and I have been privileged to have studied comparative law extensively in law school and throughout my career. But I am no expert even in the specialized vocabulary of legal education as a subject of study in itself.³

2 I have, however, taught as an adjunct professor at the Catholic, American, and George Washington University law schools in Washington, D.C., as well as at Cornell and Oxford Universities. I have also been on the adjunct faculty of the Paul Nitze School of Advanced International Studies at Johns Hopkins University since 1991.

3 Nor is my paper intended to address larger-scale issues concerning legal education. In the United States, we are currently experiencing a vast oversupply of law school graduates, for whom the economy offers no serious hope of fulfilling professional employment in their chosen field. Perhaps the continuing flood of entering law students reflects a collective delusion regarding job prospects. Some analysts even suggest that law schools are deliberately creating the imbalance between supply and demand: having become a profit center for universities, law schools now have a mission entirely unmoored from the task of imparting a serious legal education, much less training lawyers of the next generation. I have nothing to offer on that score. That something is seriously amiss seems beyond doubt. But I would be reluctant to urge that law schools shut their doors to anyone eager to gain the unique perspective that such schools are—when they are at their best—well designed to impart.

With those caveats well noted, the following are the suggestions of a veteran legal practitioner about the proper role of the academy and its ideal interactions with the world of practice:

1. What skills are required of legal practitioners, and how do students maximize their chances of learning those skills? It is easy to answer this question in the abstract by invoking broad categories of activity: “reading,” “researching,” “writing,” “analyzing.” Perhaps a more progressive answer would add “listening” or “bringing perspective to legal problems.” But the best answer focuses on the core function of lawyering: “advocacy.” The trick is in translating such answers into an educational approach that is realistic.

In many languages, even the word used to name legal professionals indicates the answer to this question. *Un avocat*, *un'avvocato*, and *ein Advoka* by definition are titles for someone who advocates: that is, anyone who speaks and attempts to persuade an adjudicator on behalf of someone else. An advocate is given the high responsibility of (a) analyzing a legal document, (b) presenting a plea to a neutral magistrate, or (c) negotiating a relationship from the perspective of another who presumably lacks the formal training to do so. Much depends on the advocate's skill in carrying out that task: possibly the applicability of a government sanction, or the success of a venture, or the conditions under which people will interact with each other. For an advocate, it is both a heavy responsibility and a great privilege to have the well-being of others in one's hands.

It is impossible to conceive of a successful lawyer who is inadequate as an advocate. Moreover, it is impossible to conceive of a student who succeeds at internalizing legal knowledge but who cannot then use that knowledge to present the case of another person. So the teaching of advocacy must be the center of legal education, including the training of those who intend to pursue careers in business or government or the academy rather than in the practice of law. Fortunately, a curricular focus on advocacy as a skill is actually quite simple to embrace. The history of the law—decided cases, legislative enactments, negotiated solutions to problems—is itself a record of the outcomes of advocacy. Advocacy, in other words, is not only the substance of the practice of law as a profession, but also the theme that runs through the development of the legal systems under which we all live today.

Matters resolved by courts in the past are—and should be taught as—not static results, but the outcomes of dynamic processes. Students should be encouraged not merely to learn the rules that decided cases either articulate or apply, but also to understand how the courts were seized of the issues in the first place. What did the losing side have to say? After all, the position that opposed the outcome was initially defensible in theory and then defended in practice. What was the

defense? What arguments were put forward? Why were they ultimately rejected as inconsistent with existing law? Could they have been strengthened and, if so, how? How would we argue the two sides of the dispute had we been handed the assignment? What can we infer from the policies and principles that underlie the legal system from a given example?

Nor is this focus something applicable only in common law countries, with their emphasis on judicial precedent and their reliance on the doctrine of *stare decisis*. In the same way, statutory law and the contents of legal codes should be seen as the outcomes of competitions between differing interests. Why is it that a will requires a certain number of witnesses? What would happen were the law otherwise? Should blasphemy and other forms of hateful speech be treated as offenses against the body politic that are to be punished by civil authorities? What does our societal answer to that question say about the balance between individual and collective rights?

The contest of interests leading the law-making body to adopt a particular approach may reflect that political controversy and should be embraced, rather than avoided, in the teaching of law. Such controversy is a critical part of the story of how the law came to be and, therefore, is vital to an understanding of how the law is to be interpreted or applied and how promotion of changes in the law should be grounded. Students should learn to understand that what is now statutory, “black-letter” law may well have been opposed—and even resisted—by members of the legislature and of the broader society who thought it to be antithetical to other important concerns.

Such an approach would—with very little or no need for investment of additional resources—inculcate in students the notion that the goal of the study of law is ultimately the development and refinement of the skills of advocacy. Such a notion would stand them in good stead to begin to analyze real legal problems presented by real clients in the real world. Furthermore, it would in no way dilute or detour the studies of those not interested in the practice of law as a career.

2. What is the responsibility of the legal academy in training students who do wish to practice law? It is hard to walk the fine line between overdoing practical training and ignoring it. But there are areas to explore here. Perhaps students who know that they intend to practice law can enroll in more specific courses that will provide them with more practical exposure, while those with interests in other areas can continue to pursue those areas. There is no doubt, however, that the quality of the entering cohort of practitioners will be improved if their training in practical skills and concepts is not completely reserved for their post-degree work.

Practitioners responsible for recruiting and hiring young lawyers often debate whether to favor students whose coursework in law school has exposed them to the

specialized areas that they may need to address in practice. Certainly a graduating student unfamiliar with even the vocabulary of a particular area of practice—say, international trade—will have a difficult time finding his or her feet in a law firm whose business depends on that area. But is it helpful for that student to have concentrated on electives with a limited focus? Would such courses, while deepening his or her exposure to specialized learning, be likely to leave the student underprepared to address questions that are not so neatly circumscribed?

With very few exceptions—certainly patent law, possibly taxation—specialty is something that best takes place in professional environments, not in school. The better view certainly seems to be that to be a good international (or criminal, or environmental, or family) lawyer, you first have to be a good lawyer. Specialized classes can be analogized to language learning: it is sufficient, in the beginning, to teach basic vocabulary and the rules of grammar. Fluency comes from speaking and listening, which are not restricted to the classroom. Certainly someone who has read and understood the plays of Jean Racine will have improved his or her fluency in French, but there are other ways to achieve that same objective.

Encouraging abstract thinking about the law as a societal phenomenon is critical to imparting an understanding of what lawyers do. Hence, a paradox emerges. Sometimes the classes and coursework that seem most removed from the day-to-day life of practice—courses in jurisprudence, for example—play the most vital role in encouraging development of the skills and perspective most important to successful work as a legal professional. Teachers of such fields have a special responsibility not to treat their subjects as of academic interest only, and they should seek examples and illustrations from the real world in which lawyers interact with clients and with the institutions of the legal regime itself.

The responsibility of the academy to the profession, therefore, is not to ensure that students entering specific areas have studied those areas to the depth at which experienced practitioners are comfortable. Training programs, law firms, and government agencies can better play the role of tailoring specific skill sets to their particular needs. The educational institution's job is to increase the level of basic proficiencies—of reading, writing, listening, speaking, or in this case advocacy, which are the stock in trade of legal practice and the currency of a legal education properly conceived.

3. What level of facility in oral and written advocacy should be expected of students awarded university degrees in law and intending to practice, and how is such facility to be achieved? There is likely to be universal agreement that, as a matter of preference in an ideal world, the answer is “as much as possible.” But in the actual world, in which legal educators must operate, there are economic and logistical constraints on how much can be taught and what resources would have to be invested in a sensible program to achieve this goal.

Although encouraging a focus on advocacy is to be urged above all, time should not be wasted asking students to opine about whether a particular legal doctrine or the outcome of a legislative campaign or even an executive decree is “right” or desirable. The professor’s objectives should be to challenge assumptions, to make students recognize their assumptions even when those assumptions are unspoken, and to insist that positions taken in discussion or analysis be well defended. Students should explore the likely consequences of the law and how those consequences would have been different had the dispute ended differently. They should be asked, “Can we reconcile one, or the other, or both possible outcomes with higher legal principles, such as those enshrined in our national constitution? Can we reconcile them with the dictates of international law?”

The proper emphasis is on what legal premises underlie the outcome and what would have underlain the opposite had it prevailed. The legal system rests on identifying and understanding the core values and principles of the law. Only lawyers who are consistently able to understand those core principles will be able to represent their clients in more than mechanical settings, and only law students familiar with such an approach have any business calling themselves laureates in legal studies.

The ability to communicate effectively in the legal language of the jurisdiction in which a student studies the law is absolutely vital to his accomplishment as a practitioner. There can be no compromise here, because a lawyer must use words and use them well to have any prospect of success in the legal profession. A lawyer must be able to understand and use words in an intelligent and persuasive manner. If there is one metric that most directly reflects the achievements of practicing lawyers in the field, it is their fluency in the language that they must deploy for their professional communications.

There is no reason to believe that advocacy cannot be taught, even if in reality some people seem far more predisposed to internalize its rules than others. And, of course, the only way to learn to advocate is to do it and do it and do it again. Even if individualized faculty guidance is not possible, students are generally willing to help each other to achieve a level of accomplishment in the requisite skill categories. Every opportunity to create a vehicle for advocacy should be seized until effective advocacy is a habit. Again, this emphasis does not require abandoning the teaching of constitutional law in favor of encouraging students to debate their views about political philosophy.

Such a transition would be sterile at best and certainly would do nothing to promote familiarity with basic legal concepts. It does, however, require that legal principles be seen in their context as the result of, and as subject to, contests between competing claims to authenticity and correctness. Some tremendously valuable tools for the honing of those skills are moot courts, mock trials, and clinical

programs, all of which ask students to put themselves in the shoes of practitioners addressing practical problems that might be encountered in the real world.

Such programs should not be restricted to those students who intend to pursue careers as lawyers. On the contrary, if acquiring the skills and techniques of successful advocacy is seen as central to the study of law, then all who receive a law degree should have had significant exposure to that core. Presumably no student would earn a medical degree without doing basic dissections, with no exception for those who plan on careers in psychiatry (or in public policy!). The core of the curriculum and the measure of its success should be recognized to embrace this perspective.

The Philip C. Jessup International Law Moot Court Competition, which is sponsored and administered by the International Law Students Association, is a particularly effective vehicle for the promotion of advocacy training in the field of international law.⁴ The Jessup,⁵ as it is universally known, is the largest moot court program in the world, with 600 law schools in nearly 100 countries participating annually. Founded in 1959 at Harvard Law School, it requires students to submit written memorials and to present oral argument on both sides of a fictitious case before the International Court of Justice in The Hague. The final round of the Jessup ordinarily takes place before a bench of world-renowned international lawyers in Washington, D.C., each March. Participation in the Jessup is easily arranged, and its sponsoring organization is ready to help new participants become familiar with the basic rules.

Incidentally, not only does the Jessup provide invaluable experience in written and oral advocacy as well as in substantive law, but also it introduces law students to their counterparts and future colleagues from around the world. Other programs have begun to adopt the Jessup model, and there are now international competitions in fields such as criminal law (including a moot styled on the International Criminal Court), environmental protection, and even commercial negotiation. All of those programs are accessible, and all provide wonderful educational opportunities.

4. How much knowledge of nonlegal fields—economics, history, sociology, psychology—should be expected of young lawyers entering professional practice? The old cliché is that “good lawyers know the law; great lawyers know the judge.” Perhaps this platitude was true once, and perhaps it is still true in dysfunctional systems. However, the better view today is that “good lawyers know the law; great lawyers know the context within which the law operates.”

4 Full disclosure: I was founding chairman of the International Law Students Association, and I currently serve on its Board of Directors. I have also been involved in the Jessup Competition for more than three decades, having drafted six of the hypothetical disputes that are the subject matter of the contest each year. Materials about the current year’s Jessup, as well as earlier competitions and lots of practical information, can be found at <http://www.ilsa.org/jessup>.

5 Philip C. Jessup was a revered American scholar and practitioner of international law who served as judge on the International Court of Justice from 1961 to 1970.

Law students and lawyers must familiarize themselves with bodies of knowledge not contained in legal textbooks. They must have a grounding in economics as well as in history and government. That grounding does not mean that they need to qualify for degrees in those fields, but they must be conversant in them, because without some level of comfort in discussing, say, basic economic concepts, a lawyer will be of no use to a client about to enter a sophisticated international business arrangement. Moreover, a law student's ability to understand even what lies between the cover of those maligned legal tomes will depend in large measure on his or her knowledge of the political, economic, and historical context in which legal principles were articulated, adopted, and applied.

Of all fields of professional study, the law is perhaps the one most difficult to strip from its context. Yet if one sees the law as not only one of the humanities but also a social science, with equal claims on both, one will immediately recognize the need for law graduates to feel at home in research, in analysis, and in real-life application. The former is the traditional stuff of the legal academy, but the training of the practitioners of the future requires that law faculties immerse themselves in the latter as well.

5. How should law faculties reform themselves to address contemporary changes in the world of law practice? Two such changes are of special (and interrelated) significance: globalization and the increasing reach and importance of technology. If there is an innate—often understandable—resistance to change among legal educators, those are the areas in which it is most likely to be seen. Yet they are also the places where willingness to change and adapt will be the most accurate predictor of competitiveness. Globalization virtually requires that the English language be part of a law student's education anywhere in the world, as well as a comparative approach to the law that will give the student a basic familiarity with differences and similarities among legal systems. International law is no longer a specialty but rather something with which every law student must have some measure of acquaintance.

The importance of this development is difficult to overstate. Rare indeed is the practitioner who can operate as a lawyer anywhere in the world without encountering issues that require consideration of foreign, comparative, or international law. Intellectual property, the environment, taxation, and even family law can no longer be addressed within the comfortable borders of one's own country. And the pace of change continues to accelerate. Consider these facts:

Fifty years ago, the ways in which a country treated its own citizens were thought—with only a very few exceptions—not to be of international legal concern. That view has changed.⁶

Fifty years ago, how the nations of the world traded with each other was subject to little international legal scrutiny. That thought has also changed.⁷

Fifty years ago, how nations used and abused their air and water, how they set up means of communication and transportation, how they protected their intellectual property and developed their natural resources—none of those concerns were subjects of an international legal regime.⁸ That reality too has changed.

The next generation of lawyers will continue to manage changes in all of those areas and in others that we cannot now even imagine, which becomes an enormous challenge not only to law students and lawyers, but also, importantly, to law teachers if they and their work are to remain relevant.

As for technology, it is beyond doubt that computers and the Internet have completely revolutionized even the most quotidian of legal tasks, such as research or communication with colleagues and tribunals, both of which are increasingly carried out not in libraries or in meeting rooms but in front of computer monitors and keyboards. A successful legal practitioner in the 21st century simply cannot be computer illiterate. Here again, problems are posed for those who in the arc of their own educations never needed fluency in technology. But passivity in the face of such revolutionary change is no answer. The problem for educators is exacerbated when students have been developing their own expertise in the use of computers beginning at an ever-younger age. Yet teachers must be sufficiently versed in contemporary methods to be able to use them and to teach them with confidence.

6. Do law schools support—or do they even engender—biases against students intending careers in legal practice? Within the four walls of the academy, as between the thinkers about the law and those who intend to get their hands dirty practicing it, the former are all too often favored over the latter. This bias is seen in classrooms and in faculty lounges. The tendency is reinforced when those who set the rules for the academic institution themselves have no understanding of or

6 Such instruments as the International Covenant on Civil and Political Rights, which was concluded and opened for signature in 1966, demonstrate the “internationalization” of human rights principles as law, to be interpreted and applied like any other rules of law. As one judge in the United States once wrote, human rights law has been transformed by such developments, and it is no longer “a mere set of benevolent yearnings, never to be given effect.” *Filártiga v. Peña-Irala*, 577 F. Supp. 860, 863 (E.D.N.Y. 1984).

7 Such treaties as the General Agreement on Tariffs and Trade (1947) and its offspring have imposed an increasingly normative regime on international commerce, complete with methods (even if not yet perfect methods) of enforcement.

8 Preserving and protecting our natural environment has increasingly been the subject of international conventions and regimes, including such comprehensive agreements as the ones reached in Kyoto. It seems quite obvious that threats to our planet from climate change, pollution, and overpopulation cannot be addressed satisfactorily by any one nation or group of nations acting alone.

personal experience in the world of practice. So without reversing the bias with equally unfortunate results, the task here is to restore the level playing field. There is no right or wrong way to absorb legal training, although the law faculty might appropriately feel more responsibility toward those intending to use what they have learned.

The notion that law schools should avoid teaching anything practical because the academic discipline of the law is corrupted when exposed to sunlight is simply wrong. It is a fallacy to suggest that courses such as civil and criminal procedure, evidence, or trial practice are focused on the “craft” rather than the study of jurisprudence and, therefore, have no legitimate place in the academy. Indeed, many graduates think back on their training in the law of evidence as among the most intellectually rigorous experiences of their educations.

While the undervaluing of areas of the most direct practical applicability may reflect nothing more than the biases of teachers who themselves have never traveled in the world of legal practice, it does have insidious effects on students. It passes along a value system that disrespects the use of the law for the purposes for which it was intended. It makes the law as a field of study something akin to pure mathematics: beautiful and fascinating to those few who understand it but perplexing, opaque, and hopelessly recondite to all others.

Engaging students in exercises of advocacy would help to reduce this tendency. So, too, would be encouraging students—no matter their interest in practicing law as a career—to experience for themselves the realities of law practice. Summer internships, clinical programs, mentorships, adjunct faculty—all are devices that broaden the understanding that students will develop regarding law in the real world. All would tend to offer another perspective—an important one—on law as an academic discipline. Many students in law faculties may still have no desire to practice law for a living, but they should, by the time they receive their degrees, have a sense of how their brothers and sisters who do practice spend their lives.

7. To the extent that law schools do help their students to prepare for practice, are they making those opportunities available to everyone, including populations underrepresented in the profession (such as women and ethnic or linguistic minorities)? Like all merit-based professions, the law can act as an equalizer: a door of opportunity through which all who can master the materials must be welcome to enter. Saying this, of course, is easy; living by it is hard. Yet instilling young lawyers with an understanding of the extent to which existing legal systems have helped to entrench existing inequalities would aid in the promotion of this critical objective.

In some cultures, the profession of legal practice brings significant rewards in terms of compensation, prestige, and role in society. Those engaged in the

profession may jealously guard their fiefdom against intruders, especially those from disfavored backgrounds and groups.

Although law teachers can hardly be expected to take on the task of ending prejudices and establishing utopian equality of opportunity, they certainly can play their part in promoting the practice of law as a vehicle for positive social change. They can do so by ensuring that, to the extent that they are offering or facilitating opportunities to experience the world of practice, they are being careful to make those opportunities available to all. They must chase away their own prejudices, including those, for example, regarding the “proper” role of women in the profession or in the world. They must encourage all of their students to reach their potential to the best of their ability, unrestrained by limitations based on ethnicity, sex, or physical condition.

The adjustments being proposed here have to do more with changing attitudes than reallocating resources. Indeed, much of this approach is as applicable in the developed world, where funds may be easier to locate, as it is in developing countries. But there can be no doubt that in the world of the 21st century—a world in which business, the environment, labor, investments, culture, and technology recognize no national boundaries—lawyers are going to have to be trained according to models different from those that have served for so many centuries. A key measure of the reform of legal education, therefore, will be how well the law faculty of tomorrow is preparing those who will practice law in the world emerging around us. That reform is a necessity if the role of the law itself will be preserved in our contemporary age.

Postscript: why is this important? Shakespeare is the best authority on this subject. The best testament to the importance of legal education is presented through the hooligan Jack Cade and Dick the Butcher in *Henry VI, Part II*. Dick famously said, “The first thing we do, let’s kill all the lawyers.”

The context of this remark is critical and is rarely explored. Dick and his friend Jack Cade are daydreaming about overthrowing the government—not only the government, but also all of the existing social order. Here is Jack Cade’s platform:

CADE: There shall be in England seven halfpenny loaves sold for a penny: the three-hooped pot shall have ten hoops, and I will make it a felony to drink small beer: all the realm shall be in common; and in Cheapside shall my palfrey go to grass: and when I am king, as king I will be, . . . there shall be no money; all shall eat and drink on my score; and I will apparel them all in one livery, that they may agree like brothers and worship me their lord.⁹

9 A three-hooped pot was a measure of beer served in public houses. “Small beer” is beer with less than the standard alcohol content. A palfrey is a pony. Cheapside was, in Shakespeare’s day, the heart of London’s financial district. For a “palfrey” could “go to grass” in Cheapside, the commercial core of the city would have had to be ground to a halt.

It is in response to this speech that Cade's accomplice, Dick the Butcher, replies:

DICK: The first thing we do, let's kill all the lawyers.

Then Cade goes on:

CADE: Nay, that I mean to do. Is not this a lamentable thing, that of the skin of an innocent lamb should be made parchment? That parchment, being scribbled o'er, should undo a man? Some say the bee stings: but I say, 'tis the bee's wax; for I did but seal once to a thing, and I was never mine own man since.¹⁰

So why do Cade and Dick want to kill all the lawyers? Because it is the lawyers who will oppose their scheme. It is the lawyers who will stand and defend those who would be the conspirators' victims. It is the lawyers who will ensure that promises duly made be kept, that order for the common good be respected, and that neither Cade nor any other man in England be worshipped as the people's lord.

Cade and Dick know that the success of anarchy and dictatorship requires the elimination of the lawyers. In every society in which human rights are openly violated in today's world, the lawyers had first to be silenced—to be rendered powerless, to be marginalized, to be systematically neutralized.

Law students must be trained, to the best of their ability, not to let this happen. The discipline of the law, taught in the legal academy, must prepare its acolytes for this challenge as well. They must be taught, in short, to be the kind of lawyers that Jack Cade and Dick the Butcher knew that they would have to kill.

10 Impressing a wax seal on a deed made an otherwise nonbinding commitment enforceable at law. In other words, Cade was lamenting that he had entered into a contract and was going to have to perform it.

How Transactionally Focused Clinics Can Assist in Advancing Civil Society

*Stephen M. Hudspeth**

I had the opportunity to speak at the forum on corporate social responsibility conducted by The Protection Project of the John Hopkins University School of Advanced International Studies and held in Istanbul in June 2013. The forum included a variety of very engaging and informative presentations by academics, nongovernmental organization leaders, and business executives from 10 Middle Eastern countries. It also included some academics like me from elsewhere in the world.

My presentation covered a variety of subjects related to my experiences in private practice with a large international law firm and also related to my work in corporate governance. My comments addressed the role that a clinic, either in a law school or in an economics department or business school, can have in advancing both the professional education of its students and the objective of corporate social responsibility. It does so through its work in aiding those who are most in need of professional advice in their business dealings but who are least able to afford it. That role served by clinics of this sort that are transactionally focused in an academic setting is the subject of this article.¹

My remarks at the forum concerning clinical education addressed my experiences over these past four years of teaching in the Eugene Ludwig Community and Economic Development Clinic of the Yale Law School. I specifically described what the clinic has found to be best practices in clinical legal education, with a focus on social justice programs and community development programs. I then explained how the clinic itself is divided into smaller subclinic groups, which focus on assisting specific clients in both smaller business development and larger-scale economic development in a variety of ways. I also emphasized how business, environmental sciences, and other graduate school students have been able to work effectively alongside our law students to apply their own disciplines in meeting client needs within the context of the clinic's overall work.

* *My background is in a large law firm practice from which I retired, after more than 30 years, at the end of 2004. For the dozen years before my retirement, I headed the firm's litigation department, which extended to all of the firm's 26 offices around the world. Following my retirement, I began teaching law at the graduate school level. I did so first at Yale's School of Management (its graduate business school), where I taught courses in commercial law, nonprofit law, and ethics, and then, beginning four years ago, at the law school.*

1 Clinical Visiting Lecturer, Yale Law School.

The clinic has found those hands-on experiences to be powerful educational tools for its students. Such experiences also provide very effective assistance in meeting the needs and advancing the objectives of the clinic's clients. As noted previously, they also provide a vehicle for harnessing together graduate students with specialties in different disciplines for their mutual education and the clients' benefit. In addition to observing their students' performance in class, the clinic's faculty members have the opportunity to work closely with students in the smaller subclinic groups within the larger program. The clinic's students repeatedly say that their clinical work has been among their most meaningful educational experiences.

The Clinic's Faculty

The clinic was founded 25 years ago by two professors of the Yale Law School, J. L. Pottenger Jr. and Robert Solomon. Solomon retired two years ago, but Pottenger is still very actively involved in the clinic's work and supervises other clinical programs of the law school.²

The clinic also has a full-time visiting clinical associate professor, Anika Singh Lemar, who is assisted by a full-time fellow holding a two-year appointment.³ The clinic has the assistance of several clinical visiting lecturers, who serve part-time, assist in classroom teaching, and help with specific subclinics.⁴

Most of the other clinics within the law school are focused on litigation or advocacy. By contrast, the Eugene Ludwig Community and Economic Development Clinic is focused on transactional work, which involves, broadly speaking, entity formation and operation. That work can include the development of both small undertakings and major projects. Most of the latter involve support of various kinds funded by U.S. federal, state, and municipal governments under a variety of programs that are often focused on housing.

2 In fact, the law school has two dozen separate clinical programs. other law school clinics address such areas as (a) enforcement of internationally recognized rights; (b) the role of civil society in enforcing human rights and combating corruption, child labor, forced labor, and labor trafficking; (c) education adequacy; (d) environmental protection; (e) criminal defense; (f) immigration; (g) media freedom and information; (h) legislative advocacy; (i) landlord-tenant rights; and (j) advocacy for children and youth, to list only some of them. So I will be touching in this article on only one aspect of a very broad clinical program at the law school.

3 This fellowship appointment is made for two years with a view toward having the fellow move on to a permanent faculty position, most likely at another law school. Thus, for the past two years, the fellow has been John T. Marshall, who is now a professor at Georgia State University College of Law in Atlanta. The new fellow as of July 1, 2013, is Manoj Viswanathan.

4 The current clinical visiting lecturers are Charles Muckenfuss of the Washington, D.C., Bar; Lawrence Nadel of the Connecticut Bar; and me.

Roles and Responsibilities of the Clinic's Students

The clinic runs the course that prepares new students to embark on the clinic's work. In turn, the clinic uses the services of those new students, as well as returning students, to perform its work.

The clinic's classroom course is integral to the clinical experience and is designed to help students prepare to work on the clinic's projects. It is also intended to give students an overview of both the history of community and economic development in the United States and of policy perspectives on the clinic's work. This semester course is required of all students when they begin work in the clinic. As previously noted, while students are taking the course, they also participate in the work of one or more subclinics.

After they have completed this introductory semester of both study and hands-on work, students are invited to stay for additional semesters of work in the clinic on a credit basis (graded or ungraded, at their election). Many do so for multiple semesters. In fact, some of those who stay on become "student directors" of specific subclinics. Those student directors help the faculty to supervise students and interface directly with the clients as the clients' point of contact with the subclinic. Most of the students in the clinic are law students, but the clinic also typically has graduate students from other disciplines, as noted earlier, including Yale's School of Management, School of Environmental Sciences, School of Art and Architecture, and School of Public Health.

Focus of the Clinic

For the most part, the clinic focuses its work in the city of New Haven, where Yale University is located, though it also addresses issues of regional and national scope and certainly teaches about those matters in class.⁵ The city is modestly sized, with an approximate population of 100,000, and its principal employers are "ed-med" (i.e., universities and hospitals). Thus, within the city are a half-dozen academic institutions and one of the biggest hospitals in the world, Yale New Haven Hospital. Many people who work for those institutions also live within the city limits. In fact, Yale encourages its faculty members to reside in the city by subsidizing a portion of their housing costs if they do. University faculty and medical professionals are well paid and make up a significant portion of the city's population.

5 For example, the clinic prepared a white paper that focused on the financial system collapse that gave rise to the Great Recession (the common name for the major economic downturn that followed the 2007–08 collapse in the financial markets). The white paper assessed the impact of that collapse on economically distressed urban communities around the United States (and the often predominantly minority populations within those communities), with particular reference to the mortgage foreclosure crisis. The white paper also proposed reforms to address that crisis. The white paper received wide attention upon publication, including the attention of congressional committees that were focused on this issue.

Other portions of the population, however, have low incomes and live in economically distressed areas. Hence, much of the clinic's work is focused on those areas. However, just because this portion of the population is disadvantaged economically does not mean that the people lack good entrepreneurial ideas or great abilities in community organizing. What they typically lack is (a) access to legal, business, and other professional advice and (b) capital to bring their creative ideas to life. The clinic helps on both sides of that equation.

The Clinic's Mandate and Scope of Operations

The mandate of the clinic is twofold: to teach its students and to provide services to entities—as well as individuals—that need legal, business planning, and other technical assistance and cannot otherwise afford or easily obtain those services. That mandate has meant that the clinic's work is in many cases for nonprofit entities. Most of the clinic's client entities have section 501(c)(3) status under the U.S. Internal Revenue Code, which allows them to receive donations and contributions that are tax deductible to their donors. As a practical matter, 501(c)(3) status is also important in that it works as a *de facto* imprimatur, confirming to both private foundations and government bodies that might be funding sources for the entity's work that the entity is serving a legitimate charitable purpose within the meaning of U.S. laws.⁶

Entities assisted by the clinic do everything from building and owning low-income and senior housing to running inner-city early childhood education programs and converting land that has been foreclosed by the city because of nonpayment of real property taxes into productive property that is used to enhance the community. Some of those entities counsel low-income persons seeking to establish small businesses, thereby helping them with entity formation and with development of their business plans.⁷

The clinic has also helped to establish a new community bank that is in the city and is designed to serve the needs of the previously unbanked and underbanked segments of the community. This work was accomplished during the heart of the financial crisis and its aftermath, when bank regulators were especially tough—

6 Section 501(c)(3) of the Internal Revenue Code permits qualifying entities providing charitable services to secure 501(c)(3) status ("charitable services" being broadly defined by the U.S. government's taxing arm, the Internal Revenue Service, or IRS). As noted previously, this status permits private donors to take a charitable deduction on their personal or business income tax returns for their contributions to the entity. Entities must apply for 501(c)(3) status using a detailed and complex form (IRS Form 1023), which is subject to careful IRS review, often entailing the entity's response to very specific follow-up questions from the IRS to supplement the information furnished on the completed Form 1023 itself. Having legal advice in completing the form and answering such supplemental questions can be very important to securing 501(c)(3) status.

7 During the Great Recession, more than a few Americans found generating one's own entrepreneurial activity to be a principal way of achieving employment.

and rightly so—in enforcing requirements for the creation of new banks. Some of the clinic’s assisted programs, such as the bank, are large in scale.

Another example of a large-scale clinic-supported project is a multiuse structure being erected in an inner-city neighborhood. That multimillion-dollar project is led by a nonprofit 501(c)(3) corporation that was created by a predominantly African-American church in the city. Further examples of the clinic’s activities include (a) work with a private foundation to help it find the best projects and programs to further its charitable objectives; (b) work with urban organic farms that bring farming on a small, local, yet economically efficient scale within the city limits; (c) work with entities that plan “incubators” for small businesses that are sponsored by city and university groups; (d) work with entities that bring job development to economically distressed communities with a green aspect that will train workers in skills for developing trends in the U.S. economy; and (e) work with a nonprofit 501(c)(3) corporation that gives information, education, training, and advisory services to small-scale providers engaging in a service business focusing on child care.⁸ Work for multiple clients has also included help in legislative and regulatory presentations and other work related to government advocacy.

Interdisciplinary Nature of the Clinic

As noted previously, although the clinic is composed primarily of law students, it is also interdisciplinary, with students from other graduate schools in the university as well as students who are enrolled in dual-degree programs (such as law and business or business and environmental science). The range of skills that this diverse body of students brings works well in meeting client needs and helps pedagogically in that the diversity of backgrounds serves, for example, to introduce law students to the thinking and techniques of business students and vice versa. The fact is that the clinic’s clients have a wide range of advisory needs. Therefore, having students from multiple disciplines helps to serve those needs and gives students from those disciplines the opportunity to see how their specialties and those of their colleagues work on the ground.

Key Objectives of the Clinic

Key objectives of the clinic focus on pedagogy in regard to its students and service in regard to its clients—service that helps clients reach important societal goals. The clinic’s model serves those twin objectives well and leaves both students and clients grateful for the experience of working, respectively, in and with the clinic. In fact, the clinic has served more than a few of its clients for a significant

8 Providers of child care—often first-time entrepreneurs in economically distressed communities—are, understandably, subject to significant government regulation.

portion of the 25 years of its existence, and the work of those clients has expanded significantly over that time. The work is also rewarding to the clinic's faculty because of the resulting relationships they make with their students and the visible success of achieved societal goals.

Examples of the Clinic's Work

Some of the projects of the clinic and its clients can be accomplished within one semester. Others can take not just multiple semesters but multiple years.⁹ The way the clinic does its work is perhaps best illustrated by a few examples of actual projects on which it has worked over the past few years and is working now. Such examples cover each end of the spectrum in project length, size, and type: they can be within a semester or two or extending over multiple years, for large clients or small, and for for-profit entities or nonprofit organizations.¹⁰

The first two examples described herein are of projects for smaller clients—one entrepreneurial and for-profit, the other nonprofit. Both projects were, as initially envisioned, capable of being accomplished in one semester, though additional work carried the client representation in the first example over for an additional semester and in the second example over for additional semesters and continuing to the present. The second two examples are of projects for larger clients, extending, by their very nature, over not just multiple semesters but multiple years.

The discussion of the first example will include the most detail to give a sense of the day-to-day workings of the clinic on client projects. The discussion of the other three examples will be more abbreviated.

Smaller Examples

The following two examples are at the smaller end of the scale of clinic work.

Example 1

A client from an economically distressed community presented an idea for a new business: a personal services company with a heavy online component. The business did not require significant start-up capital, which was fortunate given the financial circumstances of the two founders. However, the business did present issues of choice of entity form and of privacy protection on the Internet for its clientele in the work done for them and the resulting “product,” which would be available to each customer and to anyone to whom the customer granted access.

9 The clinic continues to operate through the summer after the academic year ends as it deals with matters that cannot wait until the fall semester begins. It does so with its usual full-time faculty and with a group of students who act as summer clerks. The student numbers are much lower in the summer than during the academic year, but students are still able to handle effectively those matters that cannot be deferred until the fall semester begins.

10 Client confidentiality restrictions prevent me from giving all of the specifics of each example; nevertheless, the nature of the work can be sufficiently described even within the confidentiality restrictions.

Initial questions moved in multiple directions. First, from a legal standpoint, who would be the clinic's client—one of the two would-be founders (or venturers) or the venture itself? The decision in this case was that the client would be one of the two venturers. The question then became how to protect the interests of the other venturer. In this case, the other venturer was able to find a lawyer who would review the documents that the clinic prepared and would serve pro bono in advising the venturer on her rights.

With that question resolved, the next issue was drafting an engagement letter defining the scope of the clinic's work for the client, reviewing the letter with the client, and securing the client's agreement to it. With that accomplished, the clinic's attention then turned to the form that the venture should take. Although a number of entity forms are possible under American law,¹¹ a limited liability form of enterprise is almost always the preferred way to go and especially in cases such as this one, in which there is known potential exposure to privacy issues for a significant portion of the entity's clientele.¹²

The clinic addressed with its client which type of limited liability entity would best serve the interests of the business. The two most frequently used limited liability entity types in the United States are (a) the corporation and (b) the limited liability company (LLC). More specifically, one can choose to establish a corporation in the form of an S Corporation (or S Corp.) or a C Corporation (or C Corp).¹³ Alternatively, one can establish an LLC.¹⁴

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- 11 Entity formation is governed by state law in most cases under American legal principles. National banks and other special-purpose types of enterprises that are subject to specific federal laws governing their formation are the exception to this general rule.
 - 12 Under American law, it is possible to form entities with or without limited liability. Two principal examples of the latter are sole proprietorships and general partnerships. For such non-limited liability entities under American law, the owner or owners of the venture (the sole proprietor for a sole proprietorship and the partners for a general partnership) are liable for the debts of the entity to the full extent not just of the entity's assets but also of the owners' personal assets. Limited liability entities, by contrast, limit the liability of their owners to the entity's assets and exclude the owner's personal assets (unless the owner has given his or her personal guaranty of an entity obligation).
 - 13 The "S" and "C" refer to specific sections of the Internal Revenue Code that have different requirements governing who may be shareholders of the corporation and whether the corporation is itself a taxpaying entity or merely a pass-through entity that reports payments made to shareholders but does not itself pay taxes to U.S. tax authorities. Generally, an S Corp. must have individuals and not entities as its shareholders and is a pass-through entity for tax purposes. Because an S Corp. is generally limited to individuals as its shareholders, it is not able to accommodate the inclusion of venture capital entities and other potential investor entities into its shareholder ranks. However, if an individual S Corp. grows to the point where those types of investors are interested in investing in it, it can easily convert to a C Corp. In some states, there is also the possibility (a) of establishing a Benefit Corporation (often termed a "B Corp.") or a low-profit limited liability company (termed an "L3C") to allow the entities' directors and managers to pursue objectives not limited to shareholder gain through profit-maximization and (b) of establishing cooperative forms of enterprise that include employees in the ownership and management of the entity. The clinic assists clients with the establishment and operation of entities such as these as well.
 - 14 An LLC has "members," not "shareholders," as its owners and can elect to be treated for tax purposes as either a pass-through entity or a non-pass-through entity. An election to be treated as a pass-through entity can easily be changed later. However, the reverse is not so easy and can have serious tax consequences, so the decision needs to be carefully considered at the time the election is made.

While the subclinic student director and an assisting law student (both guided by clinic faculty) dealt with the client in deciding on an entity form, a business student member of the subclinic team worked with the client to develop a comprehensive business plan that included a market study.

The client selected an LLC as the entity form, and the law students engaged in drafting the articles of organization and operating agreement for the LLC.¹⁵

The students also needed to draft forms of agreement for the client to use with both its customers and its vendors. Both law students and business students were engaged in that work to ensure that both legal and business issues were fully addressed. As a result of those discussions, a more risky part of the business, which involved heavy privacy issues, was placed in a separate limited liability entity, wholly owned by the parent LLC. This separation created a “firewall” of limited liability protection between the work in this specific area and the broader work of the client conducted through the LLC. Those issues were discussed carefully with the client, and the clinic ensured that the coventurer was getting independent advice on such issues from her own lawyer.

All work for this specific client, as well as for the other clients of this subclinic, was the subject of weekly supervision meetings between the students and clinic faculty to review the work done and plans for the next steps. Between those supervision meetings, faculty members were in constant dialogue with the students on individual points as their work progressed. The faculty also participated in the students’ meetings with the client. All written communications and documents produced were reviewed by at least one faculty member before being sent to the client (or to others on the client’s behalf).

The principal work for this client extended over one semester, though it continued for a time into the next semester, when some additional issues arose as the scope of the client’s business expanded. Today, the client’s business has expanded to the point where it can afford to retain paid legal advisers and business consultants. The resources provided by the clinic are always scarce and are thus directed to those who cannot afford to obtain services except through a free clinical program. Therefore, this “taking off” of a now completely financially independent client is a success story in every respect and allows the clinic to direct its resources to others who meet the clinic’s criteria for help.

The law and business students who worked on this project were tremendously proud of their work and rightly so. In fact, the hours they devoted to meeting

15 The articles of organization is filed by the founders of the entity with a state government in the United States; this act creates the LLC. The operating agreement is entered into by the members of the LLC; it defines the specifics of the LLC’s management and fleshes out members’ rights and obligations beyond those laid out in barebones form in the articles of organization. The very rough equivalents for a corporation in the United States are its certificate (or articles) of incorporation and its by-laws.

this client's (and other clients') needs well exceeded the requirements for gaining academic credit for the course. Yet those students exemplify what we regularly find to be true of our clinic students: they work above and beyond the course requirements because they find the clinic work useful to their professional training and because they are inspired by the efforts of the clinic's clients to better their communities. In fact, our students often say that their clinical work is among the most powerful experiences in their graduate education. Likewise, when giving recommendations to potential employers of the students (often, regarding our law students, such employers will include judges who hire them to serve as their law clerks for one- or two-year terms), clinic faculty members can speak of direct and continual work with the students in small groups of two to five through a semester or more of intense clinical effort and thus can share with potential employers a thorough knowledge of the students' work and capabilities.

Example 2

A second example of one of the clinic's smaller-scale projects deals with a nonprofit client. The clinic was contacted by a long-time New Haven resident who was an international women's heavyweight amateur boxing champion in her younger years and was working full-time at a New Haven hospital. She sought the clinic's help in establishing a nonprofit 501(c)(3) corporation to assist young people—especially girls—in economically distressed neighborhoods of the city. She hoped to increase their discipline and focus through the use of boxing-related fitness training programs. Her plan was to conduct the programs in local public schools as well as at a gym that she hoped the corporation would establish.

The clinic, through another one of its subclinics, helped the founder create the nonprofit corporation that then became the clinic's client. This assistance included preparing the corporation's articles of incorporation and by-laws and its application to obtain 501(c)(3) status. The corporation needed 501(c)(3) status to secure grants and other financial assistance from both governmental and private sources.

Following incorporation and during the pendency of the corporation's 501(c)(3) application, the founder proceeded on two fronts: to secure community support for the corporation's programs and to find a location where the corporation could establish its gym. After reviewing a number of locations, she settled on a former gasoline service station and automobile repair shop. The building was centrally located in the community that she intended to serve but had remained unused for over a decade and, while structurally sound, was in very poor condition. Because of its use as a gasoline service station and automobile repair shop, it also presented potential environmental problems. Clean-up of the site would be required to meet strict government rules concerning such properties. Nevertheless, it was the only property that offered affordable long-term lease terms as well as a facility that, while in need of much renovation, could potentially be transformed into a gym.

The clinic drafted and negotiated the corporation's lease for this property with the property's owner. It was a complex lease that offered multiple renewal options over a number of years at the election of the corporation. Under the lease, the environmental issues would be addressed by the property owner. As the terms of the lease agreement were being negotiated, the positive determination of 501(c)(3) status came through from the Internal Revenue Service, clearing the way for moving forward. Business students now supplemented the law students in helping the founder and her board of directors in their development of detailed business plans for the work of the corporation.

With business plans developed, the corporation's 501(c)(3) status in hand, and the lease agreement fully drafted, the founder approached the city government as well as private funders for support in renovating the building to turn it into a gym. She also contacted city officials to secure the requisite zoning and other approvals necessary to allow the building to be used for this purpose.¹⁶ Again, the clinic was intimately involved in the process, helping the corporation to plan for community meetings and government presentations. The clinic also helped to prepare grant applications to foundations and requests to for-profit corporations for assistance with the renovation.

The corporation did, in fact, receive financial support from the city to create the gym. It also received a significant private donation from a large building-supply company, which designated the founder as one of its "local heroes." The donor company supplied most of the materials and much of the labor necessary to convert the gasoline service station and automobile repair shop into a very attractive gym. The clinic helped the corporation in arranging for and documenting this support.

When the newly renovated building was opened, the mayor of the city was on hand to celebrate the event, as were hundreds of local residents. Since that time, the corporation has expanded rapidly to provide its teaching and training services to dozens of students in both the gym facilities and in five neighborhood public schools: both middle schools (with students in grades 6 through 8) and high schools (with students in grades 9 through 12). The corporation has expanded its staff accordingly. Thus, the client's program has achieved remarkable success very quickly, and the clinic students who worked on the program had the gratifying experience of doing important work that has contributed significantly to the well-being of young people in an economically distressed community.

16 The corporation's obligations under the lease agreement were made subject to those approvals.

Larger Examples

The following two examples are at the larger end of the scale of clinic work in terms of duration of the project and complexity of the work involved.

Example 3

This example is of a corporate client that the clinic has worked with for over two decades on large-scale and high-profile projects. Those projects are of great significance to the distressed economic community in which the corporation does its work as well as to the city as a whole. The client is a nonprofit development corporation that has 501(c)(3) status. The corporation was originally formed by a church based in the neighborhood, and it retains close ties to the church. However, the corporation is independent of the church and operates with its own board of directors, whose duties and loyalty are by law required to be directed solely to the corporation.

The corporation's objective is to promote economic development in its community and to provide for the needs of the community's residents through significant building projects. The clinic has advised the corporation on those projects since the corporation's inception. The projects have provided students in the subclinic group that serves this client the opportunity to be part of sophisticated legal, business, environmental, and architectural work, and they have learned enormously from the experience even as they have offered critical assistance to the corporation.

The work of the corporation, assisted by the clinic, began with the construction of housing for senior citizens. Market studies conducted by clinic business students revealed that there was considerable need in the community for such housing. As with all of the development projects, the process started with careful planning of the scope of the work (e.g., the size of the project, its location, and the number of units and stories of the facility to be built), followed by what is called *site acquisition*—the process of securing options to purchase land in the area of the planned facility from the owners of that land. Those options permit the corporation to buy the land for a stated price if the corporation exercises its option within the option period (typically 18 months to two years).

As part of the site acquisition process, the corporation also had to consider the environmental issues that the optioned properties presented. In any urban area in the United States—and especially in a city such as New Haven, which at one time had a significant industrial base—those environmental issues can turn out to be serious even if the parcel to be acquired is now residential property. The site acquisition work engaged both our law students and our environmental sciences

graduate students, along with professional advisers and consultants who specialize in doing environmental studies.¹⁷

As a prelude to the site acquisition process and as part of the initial planning, a market study was completed by the clinic's business students to assess the appropriateness of the planned facility to the needs of the community it would serve. That study considered the availability of housing in the area, the neighborhood business and other services available to meet the needs of people who would be residing in the facility, and the other development plans publicly disclosed that could affect the facility once it was built. On the basis of all of this information, the architects and the clinic students working with them considered with the client the best building design to optimize the site. The total size of the site-controlled properties, the zoning requirements, the funding sources and their availability, the client's assessment of community needs as a result of public presentations made by the client in the early planning process, and the community feedback from those presentations were all key to the decision.

All of those steps were completed with the advice of an outside consultant who specializes in such work. Then the project was put in form for review and consideration by project funders. Funders can take a variety of government and private forms in the United States, though even the private funders of similar projects in the United States are often indirectly government supported in that they receive tax credits, deduction benefits, or other indirect forms of government assistance for their investment.¹⁸

During the whole process of design and implementation, the corporation sought community input in public meetings and before government agencies, with clinic (and, therefore, student) involvement throughout.

The corporation's latest project is a multi-use building that will help to develop a particularly key street in the community. This large structure will bring to the street both housing for a variety of age groups and family sizes on its higher floors and space for commercial activities (such as a restaurant and professional offices) on the ground level. This project has been in the design and site acquisition phase for three years, and it is now reaching the point at which funders can be approached.

Over all of those years, generations of clinic students have been actively involved in the project. They learn much in the process while knowing also that

17 Those studies are reviewed by city, state, and federal government environmental regulators and typically proceed in three phases, the later phases being undertaken according to the results of the earlier phase or phases.

18 U.S. government funders for projects such as those are at both the federal and the state level. At the federal level, the government agency is the U.S. Department of Housing and Urban Development (HUD). At the state level, in Connecticut (within which the city is located), the agency is the Connecticut Housing Finance Authority (CHFA). In many cases, though, funds applied by CHFA to such projects are in large part provided to CHFA (and to other states' equivalent agencies) by HUD.

the fruits of their work will not be seen until years after they have graduated. As but one example to illustrate this point, one of the many parts of that process was the preparation of a detailed market study by a business student. The purpose of the study was to determine whether the plans for commercial use and for a broad age range of residents (from young families to senior citizens) were realistic in the community. The study received high praise from professionals in the field who reviewed it, and its findings are a key element in the process of obtaining funding for this project. The fact that the fruits of this student's outstanding work will not be fully realized for years did not diminish her enthusiasm for the work—and in that respect she is like many other students of the clinic who work in fields ranging from law and business to environmental studies and architecture. They know that the experiences they gain from doing this work are a valuable part of their graduate education and that their work will be carried forward by future generations of clinic students (with faculty guidance throughout) for however long it takes to see the project to full fruition.

Example 4

Many years ago, the clinic assisted a longstanding client in obtaining a funding stream from a shopping center to support its community development work in children's education. That funding stream was generated through sophisticated government and private funding arrangements for ownership of the shopping center, and the clinic's students and faculty helped to design and implement those arrangements.

Recently, the principal tenant of the shopping center, a large supermarket, decided to add a gasoline service station to its operations as part of a new business model for the supermarket's entire regional chain. At the same time, the clinic's client had the opportunity, with city government support, to purchase a vacant parcel of unsightly land adjoining the shopping center that had been unused for over a decade. The purchase enabled the client to lease the parcel to the supermarket to set up the supermarket's gasoline service station. This service station addition would not only make the shopping center more attractive to the community for the convenience of a nearby source of gasoline but would also add to employment opportunities in the economically distressed community where the shopping center is located.

The clinic assisted the client in obtaining title to the vacant parcel from the city (which had seized it in a tax lien foreclosure action), in arranging for environmental assessments, and in negotiating a complex long-term lease agreement with the supermarket for the new service station facility. The supermarket began constructing the gasoline station as soon as the client acquired the property and when the lease

between the supermarket and the client's land acquisition subsidiary entity had been signed.¹⁹

Law, business, and environmental sciences students all participated actively in the work, and the result has been a success for both the client and its supermarket-gasoline station tenant.

Conclusion

Academic institutions anywhere in the world can replicate the clinical programs described here using students in law, business, economics, environmental science, architecture, and similar professional disciplines. The types of work performed will vary, of course, depending on client needs and the laws and practices of the jurisdiction in which the academic institution operates. However, the role of providing support to individuals and entities that could not otherwise receive professional services absent the availability of free clinical services would not change, nor would the clinical program's influence on the academic institution's students in terms of educating and motivating them.

The clinic's model could be replicated, for example, in a university's business school or economics department as well as in its law school. In countries outside the United States, the forms of organization of the enterprises served, the role of government, and the private support for projects may differ. However, need within communities for assistance in everything from forming small businesses to implementing larger economic and other development work is likely to be present universally. Similarly, students everywhere will benefit from the great opportunity that such clinical projects provide to develop skills under close and engaged faculty guidance and supervision.

The experiences of those who have served in the community economic development clinical program at the law school strongly confirm the value of this type of work and the great satisfaction that it brings to students and faculty members alike.

19 As part of the arrangements for the client's acquisition of this parcel, the client set up a separate entity to own the land on which the service station would be located. Gasoline station operations present special risks relating to fires and environmental contamination. Consequently, the property on which the gasoline station is now located was acquired and is owned by a separate entity from that which owns the shopping center itself. This separation creates an entity "firewall" of liability protection between the ownership of the parcel on which the gasoline station is located and the ownership of the parcel on which the shopping center is located. The specific entity structure for the owner of the gasoline station parcel is an LLC whose sole member is the clinic's client. The result is that the entity's liability is limited under the state laws that govern liability for fires and other accidents and casualties even as the LLC is treated as one with its parent in all respects for federal tax purposes (and the LLC is consequently termed a disregarded entity for federal tax purposes) as long as its single member remains qualified as a 501(c)(3) entity. The clinic's students, assisted by the faculty, were actively engaged in the design and implementation of this ownership structure.

Efforts of the Hague Conference in Relation to Countries Whose Legal Systems Are Based on or Influenced by Sharia

*Kerstin Bartsch**

Introduction

Effects of Globalization

We live in a rapidly changing world. Globalization brings a closer integration of countries and people because of the enormous reduction of costs of transportation and communication and the breaking down of artificial barriers to the flow of goods, services, capital, knowledge, and people across borders.

Interaction among cultures is increasing: nowadays personal, family, and business relationships develop beyond geographic borders and cultural limits and on a scale greatly exceeding our imagination. Globalization, defined in the sense of growing interdependence among our societies, has gathered a momentum and a strength that are difficult to keep up with.¹

Nowhere is this change of our world more visible than in the accelerated movement and migration of people both within and outside national borders. In many regions of the world, traveling across borders and working or studying in other countries has become much easier. *Human mobility* and *circular migration* have become key terms for economic and social development—even in countries facing development challenges and recession or financial crisis. As United Nations (UN) Secretary-General Ban Ki-moon pointed out, “Human mobility makes our economies more efficient, even when they are not growing, by ensuring that the right skills can reach the right places at the right time.”²

In 2010, the UN estimated the number of international migrants worldwide at 214 million.³ This number reflects an increase of 64 million from an estimated 150

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1 See Hans van Loon, “Opening Speech,” *Judges’ Newsletter on International Child Protection* 16 (Spring 2010): 4–6, http://www.hcch.net/index_en.php?act=publications.details&pid=5173. Van Loon was the secretary-general of the Hague Conference from June 1996 through June 2013.

2 Ban Ki-moon, address to the Second Global Forum on Migration and Development, October 29, 2008, Manila, <http://www.un.org/News/Press/docs/2008/sgsm11894.doc.htm>.

3 Data in this section are from the UN Department of Economic and Social Affairs, Population Division, Trends in International Migrant Stock: The 2008 Revision (UN Database, POP/DB/MIG/Stock/Rev.2008), <http://esa.un.org/migration>.

million in 2002. In other words, 3.1 percent of the world's population is migrants. During the next three decades, the number of international migrants will double to 405 million by 2050—a result of demographic trends, labor market demands, widening north–south disparities, and push–pull factors that make mass migration inevitable, necessary, and—if well managed—desirable.⁴

Those statistics help to explain the scale of the migration phenomenon and the effects it has on our societies. They are important to evaluating not only the trends and opportunities but also the challenges that migration may pose to the social, cultural, or economic fields. In the context of private international law, such statistics strongly suggest that progressively unifying the rules of private international law will become more important than ever before.⁵

Given that each migrant counted in the statistics is a person with a story, human relationships are now far more determined by connections with like-minded others across borders, made easier by virtual connections through cyberspace and mass media.⁶

International Family Law

As a natural consequence of our globalized world, the number of families with international, intercultural, and interreligious backgrounds increases constantly. Globalization contributes to transforming families and changing the meaning of family. People of different nationalities marry, have children, and divorce (not necessarily in that order). They file suits in their respective home states or third states, thereby demanding support and decisions about custody and their marital property relations.⁷ The protection of children caught in such conflicts becomes more complicated with parents moving to or living in different countries. Disputes on child custody, contact or visitation rights, requests for relocation, cases of child abduction, or consideration of protective measures are connected to questions about jurisdiction, applicable law, recognition, and enforcement. Another question is how to determine the best interest of the child in cross-border family conflicts,

4 International Organization for Migration (IOM), *World Migration Report 2010* (Geneva: IOM, 2010), 3.

5 Although mainly a domain of public law, the field of migration cannot be ignored by the Hague Conference, which over the past years monitored migration matters (e.g., bilateral agreements between states related to labor migration). In 2006, the Hague Conference launched a discussion on the value of using certain private international law techniques for international migration. See Hague Conference on Private International Law, “Some Reflections on the Utility of Applying Certain Techniques for International Co-operation Developed by the Hague Conference on Private International Law to Issues of International Migration,” Preliminary Document 7, February 2010, <http://www.hcch.net/upload/wop/genaff2010pd07e.pdf>.

6 Hans van Loon, “Legal Diversity in a Flat, Crowded World: The Role of the Hague Conference,” *Revue Hellénique de Droit International* 62, no. 2 (2009): 495–510.

7 Barbara Stark, “When Globalization Hits Home: International Family Law Comes of Age,” *Vanderbilt Journal of Transnational Law* 39, no. 5 (2006): 1551–603.

particularly if this consideration is influenced by cultural or religious differences between the parents.

In today's society, more people are on the move and, therefore, are involved in more complex cross-border family situations.⁸ This circumstance has an effect on international family law, which, according to Barbara Stark is where the enormous abstract forces of globalization become real, immediate, and personal.⁹ International family law is required to provide solutions to an increasing number of more complex cross-border family situations that demand clear rules and procedures related to applicable law, recognition and enforcement of court orders, administrative decisions, and voluntary agreements. In addition, there is an increased need for efficient international and national legal cooperation, including judicial and administrative cooperation, to resolve the complex legal issues that arise with respect to cross-frontier family relationships.

Diversity of Legal Systems

A circumstance that contributes much to the complexity of legal issues arising out of cross-border family situations and that at the same time poses a challenge for their solution is the great variety of legal systems that characterizes today's world. Those legal systems reflect different traditions, including cultural and religious traditions. Some legal systems also differ in the ways they see the relationship between law and religion: as being distinct; as in secular Western legal systems; or as essentially interconnected, which is in the Jewish and Islamic traditions.¹⁰ When people cross borders or act in a country other than their own, such legal differences may unexpectedly complicate or even frustrate their actions.

In cross-cultural marriages, for example, many disparities can cause conflicts during married life. In particular, at the time of break-up, the parties may be tempted to take excessive action over the issues of child custody and visiting rights that would become contentious, perhaps followed by the wrongful removal of the child. The difficulties are compounded when several legal systems are involved and, even more so, when those legal systems reveal far-reaching differences connected with the approaches to relations between parents and children.¹¹

8 Kristy L. Wehrung, "The Netherlands," *Judges' Newsletter on International Child Protection* 16 (Spring 2010): 45–48, http://www.hcch.net/index_en.php?act=publications.details&pid=5173.

9 Stark, "When Globalization Hits Home," 4.

10 Hans van Loon, "The Accommodation of Religious Laws in Cross-Border Situations: The Contribution of the Hague Conference on Private International Law," *Cuadernos de Derecho Transnacional* 2, no. 1 (2010): 261–67.

11 Najiba Rouissi, "Tunisia," *Judges' Newsletter on International Child Protection* 16 (Spring 2010): 64–69, http://www.hcch.net/index_en.php?act=publications.details&pid=5173. Schuz identifies two main categories of cases in which religious law might be relevant in international child abduction cases. See Rhona Schuz, "The Relevance of Religious Law and Cultural Considerations in International Child Abduction Disputes," *Journal of Law and Family Studies* 12, no. 2 (2010): 453–97.

Legal systems and rules are a reflection and expression of the fundamental values of a society. Their strong link to culture is emphasized, for example, by Pierre Legrand:

It would be absurdly reductionist to see a rule simply as a rule. Indeed, a rule is not a mere act of accumulation and acquisition that would have taken place over the years or centuries and resolved itself into a formulaic phrasing of a legal problem and of its solution. What accretion of elements one sees is necessarily supported by impressive ideological formations. A legal rule is an incorporative cultural form. Just as culture is a source of identity, rules, for instance, are a source of identity.¹²

Although some scholars of comparative law have identified a global trend toward a closer integration of legal systems,¹³ developing coordination among different legal systems remains a key role of both public and private international law.

In *Hunt v. T&N plc*, Judge Gérard La Forest from the Supreme Court of Canada elaborated further on the diversity of legal systems by saying, “If this is to work in our era where numerous transactions and interactions spill over the borders defining legal communities in our decentralized world legal order, there must also be a workable method of coordinating this diversity.” He concludes that the development of “such co-ordination in the face of diversity is a common function of public and private international law.”¹⁴

In private international law, this coordination has been taken up by the Hague Conference, a global intergovernmental organization with 75 members representing all continents.¹⁵

12 Pierre Legrand, “European Legal Systems Are Not Converging,” *International and Comparative Law Quarterly* 45, no. 1 (1996): 52–81.

13 See Nigel Bankes, “Legal Systems,” in *Arctic Human Development Report*, edited by Joan Nymand Larsen, 101–18 (Reykjavik: Stefánsson Arctic Institute, 2004). Bankes (at 101) adds that the “trend to integration and convergence of legal systems is most apparent within the member states of the European Union.” See also the following authors who, according to Legrand, “European Legal Systems Are Not Converging,” defend the argument that “the civil law and common law traditions are drawing progressively closer in Western Europe”: Gerard-René de Groot, “European Education in the 21st Century,” in *The Common Law of Europe and the Future of Legal Education*, edited by Bruno de Witte and Caroline Forder, 7–30 (New York: Kluwer Law International, 1992); H. Patrick Glenn, “La civilisation de la common law,” *Revue internationale de droit comparé* 45, no. 3 (1993): 559–75; and Basil S. Markesinis, “Bridging Legal Cultures,” *Israel Law Review* 23 (1993): 363–83.

14 *Hunt v. T&N plc*, [1993] 4 S.C.R. 298, Judgment of the Supreme Court of Canada, <http://scc.lexum.org/en/1993/1993scr4-289/1993scr4-289.html>.

15 Members include 74 states and the European Union as of October 1, 2013. See http://www.hcch.net/index_en.php?act=states.listing.

The Hague Conference on Private International Law

Over the past 120 years, the Hague Conference on Private International Law has offered a forum to the international community to enhance its understanding of the diversity of legal systems and to build a bridge between those with a view to finding solutions to cross-border legal issues in the civil law field. Deriving from its purpose, which is to work for the progressive unification of the rules of private international law,¹⁶ the Hague Conference developed multilateral treaties that, despite the differences between legal systems, allow individuals and families to enjoy a high degree of legal security.

Such efforts started in the late 19th century within a small community of continental European civil law states.¹⁷ Those were times of expanding trade and commerce and of increasing movement of people across borders—a sort of prelude to contemporary globalization. Against the background of legal diversity, of differing legal systems, and of many nations still being in the process of codifying their national laws, some visionary lawyers—the most important being Tobias Asser¹⁸—thought that it would be useful to facilitate cross-border contacts through the negotiation of multilateral treaties or conventions. Asser's preoccupation at that time was the unification of the rules of private international law and the solving of procedural conflicts, not so much the unification of substantive law.¹⁹ Consequently, the aim of those efforts was not to make the laws of different countries uniform but to provide a system of coordination for the laws by unifying the rules of private international law.

In 1893, the first Hague Conference on Private International Law took place. The states that participated were all continental European civil law states. This first conference was a success, and it was followed by a second in 1894, a third in 1900, and a fourth in 1904, which Japan attended as the first and only non-European state.

16 Statute of the Hague Conference on Private International Law, (entry into force on July 15, 1955), article 1. The full text of the statute is available at <http://www.hcch.net/upload/conventions/txt01en.pdf>.

17 Those efforts were preceded by the successful multilateral negotiations of the unification of private international law undertaken in Latin America, in particular the Treaty of Lima (1878) and the Treaties of Montevideo (1889). See Diego P. F. Arroyo, *La codificación del derecho internacional privado en América Latina* (Madrid: Beramar, 1994). See also Tatiana Maekelt, "El Desarrollo del Derecho Internacional Privado en las Américas," Organization of American States, Caracas, 2001, http://www.oas.org/juridico/spanish/tatiana_maekelt.htm.

18 Tobias Michael Carel Asser (1838–1913) was a Dutch attorney, professor of law at the University of Amsterdam, and a "diplomat and indefatigable proponent of international legal cooperation." See Theodorus M. de Boer, "The Hague Conference and Dutch Choice of Law: Some Criticism and a Suggestion," in *The Influence of the Hague Conference on Private International Law*, edited by T. M. C. Asser Instituut, 1–13 (The Hague: Nijhoff, 1993), 1. Asser was the man behind the *Institut de Droit International* in 1873, the first Hague Conventions in the field of private international law, the Hague Peace Conferences (1899, 1907), and the establishment of the Permanent Court of Arbitration (1899). In 1911, he was awarded the Nobel Peace Prize jointly with Alfred Fried. See Arthur Eyffinger, *T. M. C. Asser (1838–1913), Founder of the Hague Tradition: Dreaming the Ideal, Living the Attainable* (The Hague: T. M. C. Asser Press, 2011), v.

19 Eyffinger, *T. M. C. Asser*, 23–24.

The Hague Conference's Work in the Area of International Family Law

The conferences led to seven conventions: one in the area of civil procedure followed by a revision of that convention, and five in the family law area. The latter five covered (a) international aspects of guardianship of children, (b) international marriage, (c) international divorce, (d) law applicable to marital property relations, and (e) international status of incapacitated adults.

The cornerstone for the conventions in the family law area was the nationality concept as the principal factor that connected in a transnational setting people, their relationships, and their transactions with a specific legal system to determine which court would have jurisdiction or which law to apply.²⁰ And, typically for the time, diplomatic channels—mainly through the offices of ambassadors—were used for international communication.

In the aftermath of World War II, with many families dispersed over different countries, there was an urgent need to provide maintenance support to families and to children in particular. In 1956, the UN drew up a convention about the international recovery of child support.²¹ The Hague Conference supplemented this UN instrument with conventions about the law applicable to child support and about the recognition and enforcement of court decisions on child support.²²

Since the 1960s, bridging differing legal approaches between common law and civil law systems not only became an important challenge for the Hague Conference but also offered an opportunity for further development and innovation. An influence of sharia law on the Hague Conference's efforts was not yet directly noticeable in the drafting of those conventions because only a few countries whose legal system was based on or influenced by sharia had joined the Hague Conference.

After the development of the child support conventions, followed by the Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (concluded October 5, 1961) and the Convention on Jurisdiction, Applicable Law, and Recognition of Decrees Relating to Adoptions (concluded November 15, 1965), the relationship between parents

20 *Pasquale Stanislao Mancini (1817–88), an Italian jurist and statesman, is considered the individual primarily responsible for the proposition that national law should govern status and capacity, family relations, and successions.*

21 The Convention on the Recovery Abroad of Maintenance was signed on June 20, 1956, and entered into force in 1957. It is available at http://www.hcch.net/upload/ny_conv_e.pdf. For the status of ratification, see http://treaties.un.org/pages/ViewDetailsIII.aspx?&src=TREATY&mtdsg_no=XX~1&chapter=20&Temp=mtdsg3&lang=e.

22 The Convention on the Law Applicable to Maintenance Obligations towards Children was concluded on October 24, 1956. The full text is available at http://www.hcch.net/index_en.php?act=conventions.text&cid=37. The Convention Concerning the Recognition and Enforcement of Decisions Relating to Maintenance Obligations towards Children was concluded on April 15, 1958. It is available at http://www.hcch.net/index_en.php?act=conventions.text&cid=38.

and children has remained a focus of the work of the Hague Conference, along with other aspects in the family law area, including marriage and divorce, financial and property relations within the family succession, and protection of vulnerable adults.

Four recent conventions (as opposed to the post-1955 conventions) related to parents and children can also be regarded as supplementing the UN Convention on the Rights of the Child of 1989. That convention, which is now in force for practically all countries in the world,²³ encourages states to cooperate on various cross-border legal issues: adoption, child abduction, child support, and other aspects of protection of children. In each of those four areas, the Hague Conference has adopted conventions that have found global acceptance: (a) the Convention on the Civil Aspects of International Child Abduction (concluded October 25, 1980); (b) the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (concluded May 29, 1993); (c) the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (concluded October 19, 1996); and (d) the Convention on the International Recovery of Child Support and Other Forms of Family Maintenance (concluded November 23, 2007).²⁴

A common feature of those conventions is that they all provide for cross-border cooperation directly among administrative authorities to achieve their goals. The diplomatic channels used to communicate the application of the first-generation Hague conventions internationally were considered too slow when an urgent measure of protection was required for a child who had moved or was to be moved to another country. Moreover, a focal point was needed in each contracting state, to which people could apply when they had a transnational family problem. The conventions, therefore, each require establishing or appointing a central authority—a body designated by each contracting state to provide internal and cross-border cooperation.

In addition to promoting cooperation between government authorities, the Hague Conference attempted to improve cross-border judicial cooperation in the context of the Convention on the Civil Aspects of International Child Abduction (concluded on October 25, 1980, and known as the 1980 Child Abduction Convention). The creation of an international network of liaison judges was first proposed in 1998 at the Judicial Seminar on the International Protection of Children, held at De Ruwenberg, Netherlands. It was recommended that relevant authorities

23 The Convention on the Rights of the Child was adopted and opened for signature, ratification, and accession by UN General Assembly resolution 44/25 of November 20, 1989. It entered into force on September 2, 1990, and as of October 1, 2013, had 193 states parties. See the UN Treaty Collection at <http://treaties.un.org/pages/Treaties.aspx?id=4&subid=A&lang=en>.

24 Find more information on the conventions at http://www.hcch.net/index_en.php?act=conventions.listing.

in the different jurisdictions, such as court presidents or other officials appropriate within the different legal cultures, designate one or more members of the judiciary to communicate and to act as a liaison with their national central authorities, with other judges in their own jurisdictions, and with judges in other states. The development of such a network would help communications and cooperation between judges at the international level and would ensure the effective operation of the 1980 Child Abduction Convention.²⁵

The idea of an international network of liaison judges received widespread support, and as of today, 55 countries have designated one or more network judges.²⁶ In particular, the Hague Conference attendees discussed the feasibility of direct judicial communications, particularly for the safe and prompt return of the child. This idea was considered on various occasions, including in 2009, when judges and experts from more than 50 countries and representatives from leading international judges associations met in Brussels to discuss direct judicial communications on family law matters and development of judicial networks.²⁷ Now direct judicial communications under the 1980 Child Abduction Convention have developed organically, have been supported by continuous efforts of the Hague Conference, and include developing general principles for judicial communications.²⁸

Cooperation between central authorities and direct communication between judges were seen as an innovation when they were first introduced by the Hague Conference. Today, they form part of a key approach to ensure effective implementation and application of some of the Hague conventions. This approach also serves to encourage effective administrative and judicial cooperation in cross-border family disputes when the Hague conventions are not applicable. An example

25 See Philippe Lortie, "Practical Mechanisms for Facilitating Direct International Judicial Communications in the Context of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction," Preliminary Document 6, Hague Conference on Private International Law, The Hague, August 2002, http://www.hcch.net/upload/abd2002_pd6e.pdf. See also "Judicial Seminars and Conferences Concerning the Protection of Children," *Judges' Newsletter on International Child Protection* 3 (Autumn 2001): 15–19, <http://www.hcch.net/upload/news2001.pdf>.

26 The number is valid for July 2013. See the list of designated judges at <http://www.hcch.net/upload/haguenetwork.pdf>.

27 In March 2001, at a meeting of a special commission, state parties reflected for the first time on commonly accepted safeguards used by judges when communicating on specific cases. See "Conclusions and Recommendations of the Fourth Meeting of the Special Commission to Review the Operation of the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction," Hague Conference on Private International Law, The Hague, April 2001, paragraphs 5.5–5.7, http://www.hcch.net/upload/concl28sc4_e.pdf. See also contributions related to direct judicial communications written by several judges in *Judges' Newsletter on International Child Protection* 4 (Summer 2002), <http://www.hcch.net/upload/news2002.pdf>.

28 See Hague Conference on Private International Law, "Conclusions and Recommendations of Part I and Part II of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention and a Report of Part II of the Meeting," The Hague, April 2001, http://www.hcch.net/upload/wop/concl28-34sc6_en.pdf.

is the Malta Process, which involves contracting states and noncontracting states whose legal systems are based on or influenced by sharia.

Furthermore, the Hague Conference used certain strategies to accommodate the diversity of legal systems—in particular the differences that exist between civil and common law systems on the one hand and sharia on the other.

Strategies to Accommodate the Diversity of Legal Systems

The mandate of the Hague Conference has always been to strive for gradual unification of the rules of private international law, increasingly on a universal scale. Rather than seeking to unify the various states' internal legal systems, the objective has always been to allow coordination, communication, and cooperation among them, while respecting their diversity.²⁹

This mandate and, in particular, the Hague Conference's respect for diversity become evident, bearing in mind that the period after World War II and the development of the aforementioned conventions, among other changes,³⁰ were characterized by the growing membership of the conference and, as a consequence, the gradual inclusion of an ever-widening circle of legal systems.

When Egypt (in 1961) and Israel (in 1964) joined the Hague Conference—later followed by Morocco (in 1993), Jordan (in 2001), and Malaysia (in 2002), among others—its members increasingly looked for ways to include countries with a legal system based on personal laws. In those countries, different laws apply to different categories of persons belonging to different cultural and religious traditions (Christians, Muslims, and Jews, for example). They may even have different court systems (ecclesiastical, sharia, rabbinical courts, etc.) for the different categories of persons.

The growth and worldwide expansion of its membership challenged the Hague Conference to develop strategies on how to handle this legal diversity in its work. The need to accommodate the differences between the legal systems of Western countries—based mainly on civil law and common law systems—and those of countries whose laws are based on or influenced by sharia has become an increasing concern of the Hague Conference. A variety of efforts for accommodation have been undertaken since the 1960s.

In addition, the Hague Conference recognized that, in view of the increased migration and travel of individuals and families from countries with Islamic

29 van Loon, "Opening Speech," 5.

30 Following World War II, the Hague Conference was also transformed into a permanent organization: at the seventh session in 1951, a statute that made the conference a permanent intergovernmental organization was prepared. The statute entered into force on July 15, 1955.

tradition to Western countries and vice versa, it must develop legal strategies to protect the rights of individuals and families caught in such conflicts of laws.

Development of the Hague Conventions

In developing and drafting its conventions, the Hague Conference considered the diversity of legal systems at various occasions, starting in the 1960s when Egypt and Israel joined the organization.³¹

The Recognition of Unilateral Divorces

The first convention to provide for legal systems applying different laws to different categories of persons was the Convention on the Recognition of Divorces and Legal Separations (known as the 1970 Divorce Convention). Although that convention has not received widespread acceptance—today it is in force in 20 states, including Egypt³²—it plays an important role in the Hague Conference’s efforts to unify different legal systems. The convention seeks to accommodate legal institutions that are specific to sharia.

The 1970 Divorce Convention determines the conditions under which foreign divorces will have effect in each state party. It not only is concerned with recognizing the actual decrees of divorce or legal separation but also applies to all decisions in this field, even those from administrative, religious, or legislative authorities.³³

Note that the authors of the explanatory report for the convention emphasized the following:

The respect for rights acquired in foreign countries is the very foundation of international law, and the requirements of security and stability in family matters demand the highest degree of co-operation between the States for the sake of the private interests involved, even if this means some sacrifice of their freedom of action.³⁴

This rationale seems to be valid today, particularly for cross-border family matters.

The 1970 Divorce Convention aims to prevent *limping divorces*—divorces that are valid, or recognized, in one country but not in another. The drafters of this convention did not mean to favor divorces, but because divorces existed and were increasing, the drafters acknowledged the need to limit social consequences of a

31 See van Loon, “Legal Diversity in a Flat, Crowded World,” 504.

32 The convention, which was concluded on June 1, 1970, entered into force in 1975 and, as of October 1, 2013, applied to 20 contracting states, including Egypt as the only country whose legal system is based on or influenced by sharia (signed in 1979 and entered into force in 1980). See <http://www.hcch.net/upload/conventions/txt18en.pdf>.

33 The convention is concerned only with the recognition of such decisions. Their enforcement was deliberately not considered, leaving to each state the task of deciding whether their enforcement requires proceedings and, if so, of what kind. See Pierre Bellet and Berthold Goldman, “Explanatory Report on the Convention on the Recognition of Divorces and Legal Separations,” Permanent Bureau of the Conference, The Hague, 1971, paragraph 6.

34 *Ibid.*, paragraph 3.

divorce by recognizing its existence. Divorces and legal separations validly decreed within the territory of one contracting state should be recognized in all others to provide legal certainty and to overcome the difficulties a limping divorce would entail. Those difficulties include (a) the impossibility to remarry; (b) the invalidity of a second marriage; and (c) any consequences for children of the second union, who should not become the victims of the legal difficulties.

Therefore, the objective was to provide an effective strategy for divorces and legal separations, including religious unilateral divorces, under certain conditions. In this context, the authors discussed repudiation, particularly in the form of a Muslim *talak*. They decided not to deal specifically with repudiation either by expressly including it in application of the convention or by expressly excluding it. But they emphasized that a repudiation must be able to enjoy the benefits of recognition if it involves intervention of public or religious authorities that could be regarded as proceedings. This agreement was reached as the delegates from Israel and Egypt confirmed that repudiations, according to their legal systems, required the intervention of a court or an official to become valid.³⁵

The 1970 Divorce Convention, therefore, stipulates that—for such repudiations to be recognized abroad—they must “follow judicial or other proceedings officially recognized” in the state where they take place.³⁶ This procedure entails a minimum of formalities to be taken under established rules and is carried out by a public or religious authority, or at any rate with the agreement of such an authority or in the authority’s presence. A divorce or legal separation by mere agreement between the spouses without the intervention of any authority (at least as a necessary witness) would not satisfy those requirements.

Increasingly, legal systems within the Islamic tradition now provide for such proceedings. For example, the new Moroccan civil code, introduced in 2004, maintains the institution of repudiation but has placed it under strict judicial control and has added divorce by mutual consent.³⁷

The 1970 Divorce Convention thus provides a framework for accommodating religious divorces that are unknown in Western systems but that give rise to questions about their recognition by such systems.

International Child Protection, Including the Provision of Family Care

Another example of a convention developed to take into account the diversity of legal systems—particularly the differences between (a) civil and common law and (b) Islamic law—concerns the convention on the protection of children. As mentioned before, child protection—namely, child support—is an area that the

35 Ibid, paragraph 13.

36 1970 Divorce Convention, article 1.

37 See van Loon, “Accommodation of Religious Laws in Cross-Border Situations.”

Hague Conference dealt with as early as 1956 and 1958 in its first conventions. Those conventions were followed by the Convention Concerning the Powers of Authorities and the Law Applicable in Respect of the Protection of Infants (known as the 1961 Protection of Minors Convention).³⁸

In addition, the Hague Conference dealt with intercountry adoptions, a relatively recent phenomenon that expanded slowly after World War II until the 1970s, when the numbers increased dramatically. In a first attempt to deal with intercountry adoptions, the Hague Conference adopted the Convention on Jurisdiction, Applicable Law, and Recognition of Decrees Relating to Adoptions.³⁹

By the 1980s, intercountry adoptions were creating serious and complex human and legal problems, and the absence of existing domestic and international legal instruments indicated the need for a multilateral approach.⁴⁰

Against this background, the Hague Conference adopted the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption (known as the 1993 Intercountry Adoption Convention). The convention, which now has 90 contracting states,⁴¹ aims to establish safeguards to ensure that intercountry adoptions take place in the best interest of the child and with respect for the child's fundamental rights. To this end, it provides a framework for international cooperation between countries willing to accept the departure, under strict conditions, of their children to other countries for adoption.

The deliberations of the 1993 convention's preamble and scope led to a discussion of forms of child care under Islamic law. According to a prevailing interpretation of the Qu'ran, adopting a child is not legally permissible. In principle, the only way to create a legal parent-child relationship is for a child to be born to a married couple. Therefore, most countries in the Islamic tradition do not allow adoption of children.

During the negotiations of this convention in the early 1990s, the delegations of Egypt and Morocco raised the concern that Islamic law does not permit adoption legally. The delegations expressed that the basic ideas of cooperation, safeguards, and procedures embodied in the convention would be equally useful for cross-

38 The convention was signed on October 5, 1961. For the full text of the convention, go to http://www.hcch.net/index_en.php?act=conventions.text&cid=39.

39 The convention was concluded on November 15, 1965, and was ratified by Austria, Switzerland, and the United Kingdom. Those countries later denounced the convention as a result of their ratification of the Convention on Protection of Children and Co-operation in Respect of Intercountry Adoption, which was concluded on May 29, 1993. The 1965 convention is available at <http://www.hcch.net/upload/conventions/txt13en.pdf>; find the 1993 convention at <http://www.hcch.net/upload/conventions/txt33en.pdf>.

40 See Gonzalo Parra-Aranguren, "Explanatory Report on Protection of Children and Co-operation in Respect of Intercountry Adoption," SDU Publishers, The Hague, 1994, paragraph 6, <http://www.hcch.net/upload/exp133e.pdf>.

41 Status as of October 1, 2013.

border placements of children through the *kafala* system between countries within the Islamic tradition, as well as with other secular systems.

The Egyptian delegate emphasized the need for international cooperation in all forms of child care, including those differing from adoption, such as custody, foster placement, and *kafala*.⁴² The delegate pointed out that such alternatives are accepted all over the world, and falling short of legal adoption, they often provide for the child's health, social, and educational needs in the same way as adoption. Besides, the delegate said, consideration of such alternatives within the convention would help prevent trafficking and abuse and would take appropriate care of children in countries where adoption is not recognized.⁴³ The convention delegations decided, however, not to include other forms of care in the 1993 Intercountry Adoption Convention.

In 1994, at the Special Commission on the Implementation of the 1993 Intercountry Adoption Convention, Morocco submitted a proposal for an additional protocol that would extend the convention's scope to alternative forms of child care that do not create a permanent parent-child relationship, in particular the **kafala** system of Islamic law.⁴⁴ The proposal, which met with interest and support, led to the discussion of whether including *kafala* could best be done separately from the 1993 Intercountry Adoption Convention.

The matter was taken up again in the revision of the 1961 Protection of Minors Convention⁴⁵ and resulted in including *kafala* in the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (known as the 1996 Child Protection Convention), which contains special provisions to deal with cross-border family care for children other than through their adoption in the country of origin.⁴⁶

42 Those forms, among others, are also mentioned in article 20(3) of the UN Convention on the Rights of the Child.

43 See Parra-Aranguren, "Explanatory Report on Protection of Children and Co-operation in Respect of Intercountry Adoption," paragraphs 41–42.

44 "Report of the Special Commission on the Implementation of the Hague Convention of 29 May 1993 on Protection of Children and Co-operation in respect of Intercountry Adoption," Permanent Bureau of the Conference, the Hague, October 17–21, 1994, paragraph 8, http://www.hcch.net/index_en.php?act=publications.details&pid=933.

45 At the meeting of the Special Commission on the Protection of Minors and Incapacitated Adults in 1995, the Moroccan experts submitted a communication concerning the *kafala* system, which was discussed and resulted in a tentative decision to include a specific reference to it or an analogous institution in the revised 1961 Convention on the Protection of Minors. The efforts to revise the 1961 Convention on the Protection of Minors led to adoption on October 19, 1996, of the Hague Convention on Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children. For more information, see Paul Lagarde, "Explanatory Report on the 1996 Hague Child Protection Convention," SDU Publishers, The Hague, 1998, paragraphs 3–6, <http://www.hcch.net/upload/expl34.pdf>.

46 As of October 1, 2013, the 1996 Child Protection Convention has 39 contracting states.

The 1996 Child Protection Convention covers a wide range of civil measures of protection for children—from orders concerning parental responsibility and contact, to public measures for protection or care of children, to matters of representation to the protection of children’s property. Furthermore, it has uniform rules determining which country’s authorities are competent to take the necessary measures of protection. Those rules, which prevent the possibility of conflicting decisions, give the primary responsibility to the authorities of the country where the child has his or her habitual residence, but they also allow any country where the child is present to take necessary emergency or provisional measures of protection.

The convention also determines which country’s laws are to be applied, and it provides for the recognition and enforcement of measures taken in one contracting state in all other contracting states. In addition, the cooperation provisions of the convention provide the basic framework for the exchange of information and for the necessary degree of collaboration between administrative (child protection) authorities in the different contracting states.

Kafala is specifically mentioned in article 3, which enumerates measures directed to the protection of the person or property of the child that are covered by the 1996 Child Protection Convention. Recognizing that measures of protection vary with each legal system, the drafters of the convention opted not to define the term *measure of protection*. Instead, article 3 enumerates measures that, for reason of diversity of legal systems, can be regarded only as examples.⁴⁷ Subparagraph (e) of this article stipulates measure of protection as “the placement of the child in a foster family or in institutional care, or the provision of care by kafala or an analogous institution.”

The convention negotiators noted that the measures of “placement of a child in a foster family or in institutional care” could be seen as the prototypes of measures of protection and should obviously be covered by the convention. Placement with a view to adoption was expressly excluded from the scope of the convention, above all to avoid an overlap with the 1993 Intercountry Adoption Convention.⁴⁸

During the drafting, the Moroccan delegation furnished to the Special Commission a detailed note describing the procedure for kafala established by a Moroccan law of September 10, 1993. According to the note, a child in need of protection may be entrusted either by a decision of the guardianship judge or by an administrative commission to a public or social institution or to a Muslim family, who will care for the child and, if needed, for the property of the child. Kafala is not an adoption, which is forbidden by Islamic law, and it produces no effect on the parent-child relationship. The child who benefits from kafala does not

47 Lagarde, “Explanatory Report on the 1996 Hague Child Protection Convention,” paragraph 18.

48 1996 Child Protection Convention, article 4(b). See also Lagarde, “Explanatory Report on the 1996 Hague Child Protection Convention,” paragraphs 26 and 28.

become a member of the family of the kafil.⁴⁹ The drafters of the convention noted that this circumstance was why kafala was not covered by the 1993 Intercountry Adoption Convention, but they confirmed that kafala was indisputably a measure of protection that must fall within the scope of application of a convention on protection of children.

Like the 1993 Intercountry Adoption Convention, the 1996 Child Protection Convention requires consultation with and coordination of decisions of both the state of origin and the receiving state whenever the provision of care across borders by kafala or an analogous institution is contemplated.⁵⁰ This requirement makes it possible for children from countries in the Islamic tradition to be placed in family care in Europe, for example, under controlled circumstances. Such a placement may then be followed by an adoption in the receiving country, unless that country's laws prescribe the continued respect of the original kafala for the child.

Overall, the function of the 1996 Child Protection Convention is to avoid legal and administrative conflicts and to build the structure for effective international cooperation in child protection matters between the different systems. The convention provides for cooperation between states in the growing number of cases of children being placed in alternative care across frontiers, such as under fostering or other long-term arrangements, including the kafala system. The convention takes account of the wide variety of legal institutions and systems of protection that exist around the world. In this respect, the convention provides a remarkable opportunity for building bridges between legal systems that have diverse cultural or religious backgrounds. It is of great significance that one of the first states to ratify the convention was Morocco, a country whose legal system is set in the Islamic tradition.

The 1996 Child Protection Convention has the potential to be of great assistance in providing family care across religious borders. The convention may, therefore, be more acceptable for countries that have been reluctant to join the 1980 Child Abduction Convention; its ratification or accession by countries whose legal systems are based on or influenced by sharia could fill a gap in the application of an international legal framework for protecting children caught in cross-border family disputes.⁵¹

49 The kafil is the national who grants the residency status of the child.

50 1996 Child Protection Convention, article 33.

51 According to Lowe and Nicholls, the "inclusion of kafala represents a real attempt to engage with Islamic nations." See Nigel Lowe and Michael Nicholls, *The 1996 Hague Convention on the Protection of Children* (London: Jordan Publishing, 2012). See also van Loon, "Accommodation of Religious Laws in Cross-Border Situations," as well as Ann Laquer Estin, "Families across Borders: The Hague Children's Conventions and the Case for International Family Law in the United States," *Florida Law Review* 62 (2010): 47–108.

International Child Abduction

Cross-border parental child abduction had already become a problem when the 1961 Protection of Minors Convention was drafted. Following the example of the 1956 and 1958 Conventions on Child Support, the 1961 Protection of Minors Convention introduced the concept of habitual residence⁵² instead of nationality as the principal connecting factor—although the convention maintained an important role for nationality.⁵³ A reason for this change⁵⁴ was the consideration that courts and authorities in the child’s state of habitual residence were better placed to review the child’s family situation and to decide on protective measures that would be indicated in the case.⁵⁵

The authors of the 1961 Protection of Minors Convention discussed including provisions related to child abduction, thus trying to find a solution to this growing phenomenon. But they failed. Fighting international child abduction by applying the principle of habitual residence would have required a state to be willing to return an abducted child when the child had the nationality of that state. Although a step away from the nationality principle had been taken, the idea of returning a child of its own nationality to a foreign country was a bridge too far then.

The Hague Conference members, however, realized that international child abduction was on the rise—in volume and over larger distances. In 1976, Canada suggested that the Hague Conference take up the matter again and thus launched the development of 1980 Child Abduction Convention.

The 1980 Child Abduction Convention seeks to combat parental child abduction by providing a system of cooperation between central authorities and a rapid procedure for the return of the child to the country of the child’s habitual residence.

52 An innovative concept at that time, habitual residence has gradually become the new cornerstone not only of many Hague conventions but also of many other international instruments, as well as domestic laws.

53 Nationality was the principal connecting factor in the Hague conventions of the first generation, in which habitual residence played a subsidiary role only. For example, see the 1902 Convention pour régler la tutelle des mineurs (Convention Governing the Guardianship of Infants) and the 1905 Convention concernant l’interdiction et les mesures de protection analogues (Deprivation of Civil Rights Convention). The full text of the conventions (in French) is available at http://www.hcch.net/index_en.php?act=text.display&tid=15 and http://www.hcch.net/index_en.php?act=text.display&tid=18, respectively.

54 In the case of the child support conventions, one reason to give preference to the state of habitual residence was that it was simply unfair to treat two children living in similar circumstances, who both had their center of life in the same country, differently just because they happened to be of different nationalities. Instead, it would be better to apply the standards of the law of the place where they both lived and thus to apply the law of the habitual residence.

55 See W. de Steiger, “Explanatory Report on the 1961 Hague Protection of Minors Convention,” <http://www.hcch.net/upload/expl10f.pdf>. The judgment of the International Court of Justice of November 28, 1958, *Guardianship of an Infant (Netherlands v. Sweden)*, 1958 I.C.J. 55, also called the *Boll* case, concerned the application of the 1902 Convention Governing the Guardianship of Infants. The case had an effect on drafting the 1961 Protection of Minors Convention.

It has now been ratified by 90 states⁵⁶ in most regions of the world, although only few of those states are from within the Islamic tradition.⁵⁷

The authors of the convention considered two categories of cases: (a) cases in which a child whose custody had been entrusted to and lawfully exercised by a natural or legal person was removed from his or her habitual environment and (b) cases in which a child refused to be returned to his or her own environment after a stay abroad to which the person exercising the right of custody had consented. In both cases, the outcome was the same: the child was taken out of the family and social environment in which his or her life had developed.

The central idea of the convention is that every child, irrespective of nationality, needs to be protected against unilateral removals across international borders by one of the parents. But should this happen, it is—save in exceptional circumstances—in the child’s best interest to restore the status quo ante and to let the authorities of the state of the child’s habitual residence decide the issue of custody.

Considering that the diversity of legal systems, the existence of religious or personal laws, or even cultural aspects may become relevant in relation to the custody of children, the convention takes a neutral approach. It does not seek to regulate the awarding of custody rights. For that reason, the convention is based on the principle that any debate on the merits of the question, such as custody rights, should take place before the competent authorities in the state where the child had his or her habitual residence before being removed.⁵⁸ To decide whether the abduction was wrongful under the convention, the authorities of the state to which the child has been abducted must look directly to the law of the state of the child’s habitual residence. However, this reference is of only limited significance.⁵⁹

Furthermore, the 1980 Child Abduction Convention seeks to prevent the international removal of children by creating a system of close cooperation among the judicial and administrative authorities of the contracting states. Central authorities in each contracting state are given an integral role as the focus for administrative cooperation in achieving child protection. They help locate the child and achieve, if possible, a voluntary return of the child or an amicable resolution. They also cooperate to prevent further harm to the child by initiating or

56 Status as of October 1, 2013.

57 Contracting states where a significant part of the population is Islamic are Burkina Faso, Morocco, Turkey, Turkmenistan, and Uzbekistan. See Schuz, “Relevance of Religious Law and Cultural Considerations in International Child Abduction Disputes,” 1. Ali points out that “Islamic law condemns child abduction” and that the “mere fact that some major Muslim Arab States started to negotiate bilaterally and multilaterally with Western States to arrive at a common policy to combat child abduction shows that a better and common approach to the problem is attainable.” See Awadelgeed Mohamed Ali, *Islamic Law and International Parental Child Abduction* (Saarbrücken, Germany: Lap Lambert, 2012), 85–86.

58 Elisa Pérez-Vera, “Explanatory Report on the 1980 Hague Child Abduction Convention,” Netherlands Government Printing Office, The Hague, 1982, paragraph 19, <http://www.hcch.net/upload/exp128.pdf>.

59 *Ibid.*, paragraph 35.

helping to initiate proceedings for the return of the child and by making necessary administrative arrangements to secure the child's safe return.

In addition, the convention enables individuals to apply directly to the judicial or administrative authorities that have power to apply the provisions of the convention directly. This stipulation increases the importance of the duty of cooperation placed on administrative as well as judicial authorities. At the same time, it emphasizes the intention of the drafters of the convention to take into account the important role that internal administrative and judicial authorities play in all matters concerning child protection.⁶⁰ This stipulation reconfirms that the convention is neutral between legal systems and is designed to operate in diverse legal systems.

States from all regions of the world are parties to this convention, and the convention is working reasonably well. It provides solutions to child abduction cases⁶¹ by setting clear procedures, structures for cross-border cooperation, and—above all—legal certainty. For parents who are considering moving from one jurisdiction to another, the 1980 Child Abduction Convention gives a very clear message not to take unilateral action. In this regard, it serves as a deterrent to abductions and to wrongful removals, which the convention sees to be in the interests of children generally.

Those examples describe ways in which the Hague Conference accounts for differences in the legal systems, in particular between civil and common law and Islamic law. The examples also show how considerations of different legal systems have influenced the drafting and negotiation of international conventions. The examples are not exhaustive, and they are not limited to the area of family law.⁶²

The Malta Process

Aside from its efforts to develop international conventions, the Hague Conference has taken other approaches to discuss the diversity of legal systems and their differences. One of those approaches is the Malta Process.

The Malta Process⁶³ seeks solutions to difficult cross-border family law disputes where the relevant international legal framework is not applicable. To this end,

60 Ibid., paragraphs 35–37 and 43–44.

61 Find case law on the 1980 Child Abduction Convention in the International Child Abduction Database (INCADAT) at <http://www.incadat.com>.

62 For example, during the negotiations for the July 5, 2006, Hague on the Law Applicable to Certain Rights in Respect of Securities Held with an Intermediary, securities issued under Islamic law were specifically taken into account, and they are included in the convention's definition of securities. See Roy Goode, Hideki Kanda, and Karl Kreuzer, with the assistance of Christophe Bernasconi, "Explanatory Report on the 2006 Hague Securities Convention," Brill Academic Publishers, Leiden Germany, 2005, 31.

63 See Hague Conference on Private International Law, "Report on the Services and Strategies Provided by the Hague Conference on Private International Law in Relation to the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention, Including the Development of Regional Programmes and the Malta Process," Preliminary Document 12, December 2011, <http://www.hcch.net/upload/wop/abduct2012pd12e.pdf>.

the Malta Process aims to encourage dialogue and improve cooperation between experts from countries that are parties to the 1980 Child Abduction Convention and the 1996 Child Protection Convention and from countries that are not parties to those conventions and whose legal systems are based on or influenced by sharia. In the beginning, the experts were mainly judges. In this context, the Malta Process made use of the already successfully applied approach of improving cross-border judicial cooperation by facilitating a network between judges, including those from noncontracting states.⁶⁴

The Malta Process focuses on protecting children, and it seeks to support children's rights to have continuing contact with both parents (even though they live in different countries) and to combat international child abduction.

At the heart of the Malta Process are three Malta conferences that laid the groundwork for a gradually increasing dialogue and an engagement of Western and Islamic jurisdictions over issues of child abduction and access.⁶⁵ One concrete outcome of the Malta Process is the Working Party on Mediation.

The Malta Conferences

On March 14–17, 2004, the Judicial Conference on Cross-Frontier Family Law Issues convened at St. Julian's, Malta. Attending were representatives of selected contracting states to the 1980 Child Abduction Convention and noncontracting states whose legal systems were based on or influenced by sharia.⁶⁶ This gathering was the first in a series of three Malta conferences bringing together top-ranking judges, high-ranking government officials, and central authority personnel from 14 countries, as well as officials of regional organizations, nongovernmental organizations, and academia.

At the center of the first conference was the search for common legal principles to identify the building blocks for better cooperation and for developing a rule of law between the states attending. First, the conference sought a full appreciation of how the legal systems concerned addressed cross-frontier family law problems. Second, it developed principles on the basis of consensus—thus, principles in which all countries concerned could have ownership. Furthermore, the conference's search for common legal principles implied respect for the diversity of the different legal systems and their basic values as well. Finally, the conference sought a willingness to compromise in the pursuit of shared objectives, which,

64 See the earlier discussion in this article of the International Network of Judges.

65 In addition to the Malta conferences, other initiatives have been undertaken by the Hague Conference as part of the Malta Process, such as the Morocco Judicial Seminar on Cross-Border Protection of Children and Families, Rabat, December 13–15, 2010, and the First Gulf Judicial Seminar on Cross-Frontier Legal Co-operation in Civil and Commercial Matters, Doha, June 20–22, 2011. Find more information at http://www.hcch.net/index_en.php?act=events.listing.

66 Judges and experts from the following 14 states participated in the First Malta Conference in 2004: Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, and the United Kingdom. Furthermore, representatives from the International Social Service and Reunite International took part in the conference.

in the case of international child protection, included those embodied in the UN Convention on the Rights of the Child.

The experts attending the conference were confronted with some practical and typical case scenarios. They considered how those scenarios would be handled under existing rules and procedures and what common approaches might develop improved systems.

At the conference's conclusion, those present agreed on the Malta Declaration.⁶⁷ Although this declaration is nonbinding and not intended to replace possible bilateral or other arrangements between states, it contains principles that "are much more than statements of aspiration."⁶⁸ Among the Malta principles was recognition of the need to develop common jurisdictional standards and to give mutual respect to decisions made on those bases. All the jurisdictions present proclaimed the importance of specialist judges and the restriction of the number of courts exercising jurisdiction in international child cases. Furthermore, countries attending agreed that speed is of essence in cases where parent and child have been separated.⁶⁹

Another principle, on interstate cooperation, may have set the tone for continuing the process: "Successful inter-State co-operation in child protection depends on the development of mutual trust and confidence between judicial, administrative, and other competent authorities in the different States. The regular exchange of information and the meetings between judges (and other officials) at a bilateral or a multilateral level are a necessary part of building this trust and confidence."⁷⁰

A second Judicial Conference on Cross-Frontier Family Law Issues took place in March 2006 in Malta, followed by a third Judicial Conference in March 2009, also in Malta. The Malta Process proceeded on the basis of a shared set of values and objectives: an equal respect for the different legal systems, a willingness to explore and consider new solutions, and the need to find solutions through consensus.⁷¹ In addition, the Malta Process expanded its participation from 14 states in 2004 and 19 states in 2006 to 24 states in 2009.⁷²

67 This declaration, as well as subsequent Malta Declarations, are contained in Hague Conference on Private International Law, "Malta Declarations," Information Document 8, January 2012, <http://www.hcch.net/upload/wop/abduct2012info08e.pdf>.

68 William Duncan, "Towards the Malta Process," *Judges' Newsletter on International Child Protection* 8 (Autumn 2004): 7.

69 First Malta Declaration, articles 5–8. See also Mathew Thorpe, "The Malta Judicial Conference: 14–17 March 2004," *International Family Law* (2004): 60–62.

70 First Malta Declaration, article 10.

71 William Duncan, "The Purpose of the Malta Process," *Judges' Newsletter on International Child Protection* 16 (Spring 2010): 9–13, http://www.hcch.net/upload/newsletter/JN16_Duncan.pdf.

72 In the Third Malta Judicial Conference, participants were judges and experts from Australia, Bangladesh, Belgium, Canada, Egypt, France, Germany, India, Israel, Jordan, Malaysia, Malta, Morocco, the Netherlands, Oman, Pakistan, Qatar, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom, the United States, the European Commission, the European Parliament, the Council of the European Union, the UN Committee on the Rights of the Child, the League of the Arab States, International Social Service, the International Centre for Missing and Exploited Children, and Reunite International.

The discussions and achievements made at the two conferences of 2006 and 2009 are summarized in two other declarations.⁷³ Certain conclusions mentioned in the first declaration were reaffirmed or further elaborated on in the later declarations. Aside from those conclusions, the participants agreed on improving areas for cooperation and coordination between contracting and noncontracting states in family law.

As an example, participants emphasized the need to develop a network of professional central authorities to be a focal point for the exchange of information and for the provision of assistance and advice to foreign applicants who are trying to secure either the return of or access to their children.⁷⁴ Those administrative authorities could serve as a general entry point to an unknown legal system. Moreover, they could be a first point of contact for parents needing information, advice, and assistance in cross-border disputes, particularly when foreign applicants found themselves in a country without being able to speak the language and without knowledge of the culture. Such authorities would have a vital role as the first point of contact for cooperation and exchange of information between countries and between national authorities and agencies.

States that are parties to the Hague conventions are familiar with this concept through the idea of the central authority. At the Second Malta Conference, there was common understanding that developing this kind of administrative structure for cooperation would be enormously valuable even outside the scope of application of Hague conventions. The participants at the Third Malta Conference emphasized again the benefits of cooperation by means of a global network of central authorities and suggested that “Non-Hague State Parties should be encouraged and assisted in developing the capacities and structures (including Central Authorities) which enable such co-operation to take place.”⁷⁵

The First and Second Malta Conferences concluded that courts in the different countries needed to apply common rules of jurisdiction and to be prepared to recognize foreign decisions on the basis of those common rules. In this context, participants at the Second Malta Conference declared:

It is in the interests of children that courts in different States should apply common rules of jurisdiction and that custody and contact orders made on the basis of those rules should as a general principle be recognised in other States. Competing jurisdictions add to family conflict, they discourage parental agreement, and can encourage the wrongful removal or retention of children.⁷⁶

73 See <http://www.hcch.net/upload/wop/abduct2012info08e.pdf> for the text of the declarations.

74 See article 2 of the First Malta Declaration, article 2 of the Second Malta Declaration, and article 5 of the Third Malta Declaration.

75 Third Malta Declaration, articles 2 and 5.

76 Second Malta Declaration, article 5.

The participants at the Third Malta Conference elaborated on this concept and agreed that the “ideal basis for international legal co-operation in child protection matters is the mutual recognition of decisions based on common grounds of jurisdiction. In the absence of common grounds of jurisdiction and recognition, the legal means should exist to replicate a foreign decision under domestic law”.⁷⁷

The Working Party on Mediation

The participants at the Third Malta Conference acknowledged the urgent need to give individuals involved in cases to which no international legal framework applied some assistance, in the interim, by encouraging the development of mediation structures. They recommended establishing a “Working Party to draw up a plan of action for the development of mediation services to assist where appropriate in the resolution of cross-frontier disputes concerning custody of and contact with children.”⁷⁸ They hoped that an international structure could be created that provided mediation in disputed cases involving a contracting and a noncontracting state to the 1980 Child Abduction Convention, and that central administrative entities would be created in noncontracting states that facilitated and supported mediation in the individual cases.⁷⁹

The 2009 Council on General Affairs and Policy of the Hague Conference expressed support for this recommendation and authorized, in the context of the Malta Process, establishing a “Working Party to promote the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children.”⁸⁰

On the basis of demographic factors and legal traditions, a small group of states was invited to designate an expert to the working party. Those states consisted of both contracting states to the 1980 Child Abduction Convention and noncontracting states (namely, Australia, Canada, Egypt, France, Germany, India, Jordan, Malaysia, Morocco,⁸¹ Pakistan, the United Kingdom, and the United States).⁸²

77 Third Malta Declaration, article 4. In his opening speech at the Third Malta Judicial Conference, William Duncan, the former secretary general, emphasized, “It is not enough to say that we should respect each other, or that we should recognise each other’s judgments, unless we can agree on a common jurisdictional standard.” He particularly referred to the 1996 Hague Child Protection Convention, which was the only multilateral instrument to contain a common jurisdictional standard, which was the habitual residence of the child. See Duncan, “Purpose of the Malta Process,” 11.

78 Third Malta Declaration, article 7.

79 See Thorpe, “Malta Judicial Conference,” 82.

80 See Council on General Affairs and Policy of the Conference, “Conclusions and Recommendations Adopted by the Council on General Affairs and Policy of the Conference,” March 31–April 2, 2009, 2, http://www.hcch.net/upload/wop/genaff_concl09e.pdf.

81 At that time, Morocco was a noncontracting state. In 2010, Morocco ratified the 1980 Child Abduction Convention. In 2013, South Africa joined the Working Party on Mediation.

82 Hague Conference on Private International Law, “Report on the Services and Strategies Provided by the Hague Conference on Private International Law in Relation to the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention,” paragraphs 97 et seq.

The Working Party on Mediation promotes developing mediation structures to resolve cross-border family disputes of custody or contact with children where the 1980 Child Abduction Convention and the 1996 Child Protection Convention do not apply. Over the course of 2009 and 2010, the working party drafted the Principles for the Establishment of Mediation Structures in the Context of the Malta Process (known as the Mediation Principles) and an explanatory memorandum.⁸³

The Mediation Principles call for establishing a central contact point for international family mediation in each state. This central contact point is to inform those in need about available mediation services in the respective jurisdictions, about access to mediation, and about other important related issues such as relevant legal information. The Mediation Principles further refer to certain standards for identifying international mediation services as well as to standards for the mediation process and the mediated agreement. The Mediation Principles emphasize the importance of rendering a mediated agreement that is binding or enforceable in all the legal systems concerned before its implementation. A few states—Australia, France, Germany, Pakistan, the Slovak Republic, and the United States—have already taken measures to implement the Mediation Principles in their jurisdictions and have designated central contact points.⁸⁴

In addition to its efforts related to the Mediation Principles, the working party plans to organize regional workshops to continue the dialogue and to promote the use of mediation in international parental abduction or access cases. It has met twice since the Special Commission met in June 2011, including once in 2013 when two experts spoke about the use of mediation in cross-border family matters from the Islamic perspective.

The Way Forward for the Malta Process and the Working Party on Mediation

The Malta Process has become a unique dialogue between experts from different legal systems who want to find shared solutions for practical human problems. First, the Malta Process has been a learning experience for all involved. In particular, at the First Malta Conference, participants learned about each other's legal systems. They discovered why things are done in different ways and how complex different legal systems are. Moreover, they learned that there is not one version of sharia and that there are hugely diverse developments within the countries whose legal systems are based on or influenced by sharia.⁸⁵

Second, the Malta Process has proved to be of great value in promoting dialogue, enhancing mutual understanding, and improving international cooperation in

83 The full text of the Mediation Principles is available at http://www.hcch.net/upload/wop/mediationprinc_e.pdf. The explanatory memorandum is at http://www.hcch.net/upload/wop/mediationmemo_e.pdf.

84 Details of the central contact points for international family mediation are published on the website of the Hague Conference at http://www.hcch.net/index_en.php?act=publications.details&pid=5360&dtid=52.

85 See Duncan, "The Purpose of the Malta Process."

international family law. Mutual respect, understanding, and trust have increased through the process. This outcome is key to successful future development and cooperation among contracting and noncontracting states, considering the experience of the Hague Conference that conventions—especially conventions that promote judicial or administrative cooperation—do not work unless there is good understanding and confidence between the judges and government officials of different states.

Finally, the Malta Process highlighted the importance that participating states and organizations attach to family law with increasing mobility of persons between states. The process confirmed the shared value that all participating states and organizations place on children's welfare and on the common understanding that children have the right to continuing contact with both parents.⁸⁶

For this reason, the overall opinion is that the Malta Process will continue. Already at the Third Malta Conference, the participants agreed on the following:

Continuing efforts should be made, in the interests of international child protection, to improve co-operation at the judicial and administrative levels between States which are, and States which are not, parties to the relevant Hague Conventions. Continuing efforts should also be made to develop the mutual trust and understanding between "Hague State Parties" and "non-Hague State Parties" authorities which is a prerequisite for successful international legal co-operation.⁸⁷

The achievements and continuation of the Malta Process were discussed at the 2011 Special Commission, where the proposal for the Fourth Malta Conference received support.⁸⁸

Furthermore, there is widespread support for continuing the Working Party on Mediation. In 2011, the Hague Conference Council on General Affairs and Policy welcomed the Mediation Principles and encouraged the working party to continue to promote the implementation of mediation structures. The council also requested that the working party facilitate wider acceptance and implementation of the principles as a basic framework for progress. In 2012 and in 2013, the council

86 See the statement by William Duncan at the International Centre for Missing and Exploited Children Conference in Cairo on February 19, 2009, in "Conference Proceedings: Crossing Borders to Protect the Children of the World," Cairo, International Centre for Missing and Exploited Children, 17, http://www.icmec.org/en_X1/icmec_publications/Cairo_Report_FINAL_.pdf.

87 Third Malta Declaration, article 2.

88 See Hague Conference on Private International Law, "Conclusions and Recommendations of Part I and Part II of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention and a Report of Part II of the Meeting," paragraphs 86–90.

encouraged members of the working party to continue their work implementing mediation structures.⁸⁹

The Malta Process and its working party may, however, take a slightly different approach in the future to achieve more concrete results. Dialogue, confidence building, and exchange of information will still be essential components of the Malta Process. States need to learn from one another, and the importance of understanding why things are done differently in the various legal systems should not be underestimated. In this regard, the Malta Process may also contribute to countries appreciating the differences between the legal systems. The Malta Process will, therefore, continue to be a learning experience for many, leading to an increased understanding of other legal systems.

However, the consensus achieved among judges and other experts at the Malta conferences still has to be widened to a broader range of states. Moreover, a more efficient state of fruitful cooperation with practical working arrangements must be achieved. More concrete assistance to particular states is needed to address the problems between contracting states and noncontracting states to the conventions. Therefore, in the future, the Malta Process may apply a different methodology to achieve tangible, practical results. Those efforts would require the full commitment from the judiciary and government entities.⁹⁰

The Working Party on Mediation, under the active co-chairmanship of Canada and Pakistan, has already moved in that direction. The implementation of the Mediation Principles by several states represents a concrete outcome that lays the groundwork for practical solutions. In particular, establishing central contact points for international family mediation as entry points for information, assistance, and cooperation has the potential to assist parents and protect children in cross-border disputes effectively when the 1980 Child Abduction Convention and 1996 Child Protection Convention do not apply. The central contact point may represent the beginning of a network of professional centralized authorities that can act as a point of cooperation between countries, as an exchange for information, and as a provider of assistance and advice to foreign applicants seeking the return of or access to their child.

89 See Council on General Affairs and Policy of the Conference, "Conclusions and Recommendations Adopted by the Council on General Affairs and Policy of the Conference," April 5–7, 2011, paragraph 8, http://www.hcch.net/upload/wop/genaff_concl2011e.pdf; Council on General Affairs and Policy of the Conference, "Conclusions and Recommendations Adopted by the Council on General Affairs and Policy of the Conference," April 17–20, 2012, paragraph 9, http://www.hcch.net/upload/wop/gap2012concl_en.pdf; and Council on General Affairs and Policy of the Conference, "Conclusions and Recommendations Adopted by the Council on General Affairs and Policy of the Conference," April 9–11, 2013, paragraph 23, http://www.hcch.net/upload/wop/gap2013concl_e.pdf.

90 Hague Conference on Private International Law, "Conclusions and Recommendations of Part I and Part II of the Special Commission on the Practical Operation of the 1980 Hague Child Abduction Convention and the 1996 Hague Child Protection Convention and a Report of Part II of the Meeting."

The working party launched new initiatives paving the way for more exchange of information and, above all, for the achievement of more concrete results. Among the initiatives have been (a) the expansion of the working party to include more states, (b) a more active role in helping states establish central contact points, and (c) the organization of regional meetings or workshops to consider effective solutions with like-minded countries from a specific region.

Academic Efforts

As a third strategy to accommodate the legal diversity in its work, the Hague Conference takes part in academic research and other efforts to promote coordination among legal systems. As an example relating to legal systems based on sharia, the Hague Conference and the University of Osnabrück in Germany organized a pioneering colloquium on the interaction between Islamic laws and secular legal systems in 1998.⁹¹ Furthermore, the Hague Conference participated in relevant projects, such as the RELIGARE (Religious Diversity and Secular Models in Europe—Innovative Approaches to Law and Policy) project and the EuroMed Justice III project, both funded by the European Union.⁹²

Conclusion

As the Hague Conference has developed, it has been characterized by (a) the growing connection of countries and their people; (b) the increased preparedness of governments willing to work together on private international law in the framework of an intergovernmental body; and, resulting from this, (c) the expanding range of states that are party to Hague conventions and of members of the Hague Conference. Hence, the Hague Conference has become a melting pot of different legal traditions that develops and services multilateral legal instruments.

The members of the Hague Conference have continuously developed a common international perspective on how to handle legal diversity and how to work together on instruments to permit the coordination of legal systems. This common perspective is first reflected in the conventions that take into account the diversity of legal systems either by incorporating legal institutions deriving from specific systems or by remaining neutral with a view to operating in a great diversity of legal systems and allowing all countries to join the convention.

In addition, the Hague Conference—through its conventions—promotes international cooperation in private international law. The conventions are based on a division of responsibilities between states as well as on shared responsibilities,

91 See Christian von Bar, ed., *Islamic Law and Its Reception by the Courts in the West* (Cologne, Germany: Carl Heymanns Verlag KG, 1999).

92 For more information on these projects, see <http://www.religareproject.eu/> and <http://euromed-justice.eu/home>.

and they aim at achieving practical results. Their implementation is accompanied by the Hague Conference's efforts in developing and promoting direct cross-border communication and cooperation among administrative authorities and courts. In particular, unifying rules of coordination, communication, and cooperation while respecting the variety of legal systems and substantive laws is an approach that has enabled the Hague Conference to carry out its mandate in the widening circle of participating countries.

In recent years, the dialogue with countries whose legal systems are based on or influenced by sharia has become a focus of the Hague Conference.⁹³ On the one hand, this focus occurred because more countries with those legal systems joined the Hague Conference. On the other hand, the effects of globalization, with the increasing connection between people from different cultural and religious backgrounds, required common action and joint efforts to address challenges that might derive from the connections in private international law.

For such countries, the Hague Conference continues to promote the conventions that are neutral between legal systems so that countries will overcome their reluctance to ratify or accede to the conventions. In addition, the conference accommodates differences between the Islamic legal system and other legal systems as it did when it developed recent conventions.

Furthermore, the Hague Conference aims at promoting dialogue, improving cooperation, increasing knowledge, and building trust. Its academic efforts, its judicial and other seminars, and—above all—the Malta Process have already shown successful results in strengthening mutual understanding and the exchange and cooperation between contracting states and noncontracting states whose legal systems are based on or influenced by sharia. Those efforts will continue in the future to seek tangible and effective results.

The efforts undertaken by the Hague Conference in relation to countries whose legal systems are based on or influenced by sharia contain a variety of activities that complement each other. One hopes that more of those countries will join the Hague conventions and the Hague Conference as members, which would certainly strengthen the efforts further.

93 See also van Loon, "Legal Diversity in a Flat, Crowded World," 499.

The Protection Project's First Regional Conference on Corporate Social Responsibility in the Middle East

Istanbul, Turkey, June 19–20, 2013

Opening Remarks

Mohamed Mattar, Executive Director, The Protection Project, The Johns Hopkins University, School of Advanced International Studies

Mohamed Mattar opened the First Regional Conference on Corporate Social Responsibility (CSR) in the Middle East by providing the conference attendees with an overview of the genesis of The Protection Project's CSR initiative in the Middle East and a description of the most recent activities in the region.

The idea for a CSR initiative in the Middle East dates back to December 2011, when Mattar was invited by Amr El Adawi, president of Beirut Arab University in Lebanon, to teach a two-week intensive seminar about CSR. The course had 293 students from the Faculty of Business Administration, and it focused on the international and national legal frameworks regulating the ethical behavior of companies and the implications of such frameworks for the economies of the Middle East.

During the course, Mattar explained to the students the relationship between business and human rights by focusing on the issues of labor rights, environmental standards, and corruption. As a practicum, each student was responsible for conducting a survey among local businesses to assess the business owners' knowledge and understanding of the concept of CSR. The survey included questions such as "Is the corporation familiar with the United Nations (UN) Global Compact?" and "Does the corporation have a code of conduct that recognizes the human rights of employees?" The results of the survey were later collected and used as evidence of a need for broader awareness of the concept of corporate social responsibility in Lebanon.

Following the experience in Lebanon, The Protection Project expanded the project from Beirut Arab University to other universities in the region. The Protection Project now teaches CSR courses and promotes the establishment of

clinical legal education programs in the field of CSR at universities across the Middle East, including Alexandria University in Alexandria, Egypt, and Shahid Beheshti University in Tehran, Iran.

Amr El Adawi, President, Beirut Arab University (BAU), Lebanon

Amr El Adawi began his speech by mentioning the importance of CSR in creating true competitive advantages in the market and in improving the reputation of the business. Like businesses, higher education institutions have to compete in the market, and many have, therefore, started to adopt a more businesslike approach as their administrative leverage. BAU is an example of an institution that has managed to implement a successful CSR strategy through the exploration of CSR practices beyond the classroom and into its institutional operations. El Adawi outlined the steps that BAU has taken to accomplish this task.

First, the university has launched a number of CSR-conscious centers, including the Human Rights Center, the Research Center for Environment and Development, and the Center for Entrepreneurship. With the cooperation of national and international institutions and nongovernmental organizations (NGOs) and through research, extracurricular activities, and communal interaction, all those centers encourage students to become more socially aware individuals and future professionals.

Second, BAU annually organizes conferences and hosts events that focus on topics such as human rights, labor conditions, sustainability, and CSR, in addition to promoting relevant extracurricular activities, publications, and research that will raise the students' awareness of social responsibility.

Third, the university offers academic courses designed to introduce topics of social responsibility in which students are provided with an understanding of ethical and social responsibility issues in contemporary life. By identifying ethical matters in real-life examples, students enhance their critical perspectives in implementing ethical behavior within organizations in relation to various stakeholders.

Fourth, BAU has established an ethics committee that will evaluate the ethical dimension of academic research conducted on human subjects in terms of health, security, human rights, general law, and ethical principles.

Fifth, the university is actively involved with United Nations–centered initiatives and has been committed both to the United Nations Global Compact Initiative and Working Group and to the Principles for Responsible Business Education.

Sixth, BAU will launch a web platform as a bridge between the business field and the community. The project's aim is to raise awareness of diverse public categories that are representative of local companies and public institutions to

(a) implement a value system in business and daily life and (b) raise the level of citizen engagement in the process of sustainable development. ‘

El Adawi concluded by stating that, although the majority of universities have limited themselves to teaching CSR within the confines of the classroom, the practice of social responsibility requires an enhancement of commitment to CSR at both academic and operational levels. ‘

Session 1: The Theory and the Practice of CSR in the Middle East

Yılmaz Argüden, Chairman, ARGE Consulting, and Chairman, Rothschild, Turkey

Yılmaz Argüden began his presentation by talking about the role that ARGE Consulting has been playing over the past 20 years in strengthening civil society in Turkey and encouraging corporate responsibility. ARGE has achieved those goals by (a) contributing to the creation of many foundations and associations, (b) leading some of them, and (c) helping other organizations to set up business systems and governance systems. Moreover, ARGE Consulting was the first Turkish signatory of the UN Global Compact, a strategic policy initiative that stimulates businesses to align their operations and strategies with human rights, labor, environment, and anticorruption principles.

Among the organizations that the company helped to establish is the Turkish Education Volunteers Foundation. Since its creation 15 years ago, it has reached about 2 million children. The foundation supports those children after school by building their skills. In some parts of the country, students have been able to go to a university for the first time, showing that this kind of work has a meaningful effect not only on the individual but also on the community.

Argüden then spoke about his work as head of the Turkish Quality Association and his role in establishing the National Quality Movement. As a result of those initiatives, many businesses in the country have received European quality awards, thereby putting Turkey among the countries with the largest numbers of such honors. The Turkish Quality Association has also pioneered the establishment of quality awards that are dedicated to nongovernmental organizations (NGOs). Those awards recognize that NGOs, to be sustainable, must operate like businesses and must deal with volunteer management, knowledge management, fundraising, project management, and organizational development. To improve awareness and capability building, ARGE joined forces with the Turkish Quality Association and the Bosphorus University to start an education program for NGO managers. Moreover, ARGE Consulting has been helping volunteer organizations to build

adequate systems that can generate important returns to the communities where they operate.

In its work with NGOs, ARGE Consulting follows some basic steps, explained Argüden. The first step is to make sure that the NGO's members agree on a mission and a vision. Gaining consensus is not always easy, especially in organizations that rely on donations of time and money from people who have different views; nevertheless, an NGO must have a clear mission to be effective.

The second step is to establish appropriate processes and to obtain the resources necessary to achieve the organization's goals. Once the NGO has a clear mission and goals, along with adequate resources, the time has come to build up the content. In Argüden's view, content is what convinces people, what changes their minds; thus, it is important to conduct research, to establish international benchmarks, and to communicate. Without such communication, winning people's hearts and minds is impossible. According to Argüden, many NGOs do not dedicate much funding or time to communication. This approach is a mistake because without communication, NGOs will never obtain the resources necessary to make a real difference. An NGO also must be able to identify which organizations would be willing to support the cause it embraces, which organizations have the necessary capability, and which organizations' missions and visions are aligned with its cause.

Another relevant factor for success is having a director and a small professional team dedicated 100 percent to the NGO. The director must be someone who is paid well and is capable of motivating volunteers. Volunteers donate their time and want to see results, said Argüden. If they do not see progress, they lose motivation. A professional team will make sure that the organization makes visible progress; consequently, devoted volunteers will join the workforce.

To be effective, an NGO also must be accepted by the community and must make sure that local people become involved. Furthermore, when the time comes for the cyclical renewal of the governing board, those individuals who are really involved with the organization should become members of the new administration team. To be successful in advancing its CSR agenda, therefore, an NGO must internalize three key concepts: governance, sustainability, and diversity. Those three concepts, Argüden argued, are associated with (a) a clear mission, (b) recruitment and promotion of the right people, (c) efficient communication, and (d) creation of a competent professional team to manage the volunteers.

Argüden then emphasized the importance of recognizing good practices. Individuals who contribute to a good cause should be promoted within the company and turned into champions of that cause. Such recognition, if properly done, can attract considerable support to the organization. Accordingly, ARGE Consulting helped create award mechanisms in many NGOs. Awards can be a

powerful incentive, which is essential because most NGOs do not have the power to penalize anyone and can only encourage change. To be effective, the awards must be (a) granted by independent organizations that reward those individuals who really do a good job and (b) based on appropriate criteria, including effectiveness, innovation, sustainability, and possibility to replicate the CSR initiative in other regions or countries. NGOs and academia can play an important role by developing the criteria and using it to independently evaluate CSR initiatives. ‘

In concluding his presentation, Argüden mentioned three factors that determine the type of CSR initiatives in which companies are more likely to invest. First, companies tend to invest in programs that match the company’s core competencies. Pharmaceutical industries, for example, tend to donate to organizations working on health issues, simply because they understand the field and are better equipped than other companies to develop effective partnerships in such sectors. Second, companies choose projects that are aligned with their mission and vision. Third, companies often prefer the bottom-up over the top-down approach, and such companies like to support initiatives that people working for the company feel closer to. At times, companies adopt that approach by matching the donations of their employees. Other times, companies—especially if they are family businesses—embrace the cause of their owners.

Jeffrey Avina, Director of Citizenship and Community Affairs, Microsoft Middle East and Africa

Jeffrey Avina began his presentation by stating his belief in the important role played by academia in driving public–private partnerships. To effectively play that role, scholars must understand the characteristics and competences of the academic world while also appreciating the capacities, interests, and objectives of companies. In Avina’s opinion, academia is a powerful actor because it is able to offer a policy vision. Some companies lack an inspiring leader who is capable of effectively guiding the company’s CSR initiative. Academia can assist by driving the discussion through research and through the organization of conferences—such as this one—that bring together scholars and representatives of the private and public sectors and that promote meaningful debate on the issue of CSR.

Avina conceded, however, that academic events do not always develop into discernible projects and that, at times, a successful initiative derives simply from the idea of one individual. Such was the case for the Child Exploitation Trafficking System, which was designed by Microsoft. The project started when Paul Gillespie, detective and officer in charge of the child exploitation section of the Toronto Police Service’s sex crimes unit, wrote to Bill Gates, former chief executive of Microsoft, asking for help in dealing with problems related to human trafficking

and disappearances of children. Gates immediately became involved and decided to invest in the system.

Nevertheless, argued Avina, this individual approach is not the most effective, and sustained dialogue among experts in the private and academic fields can be a better driver of CSR policies. An example is the current partnership between Microsoft and the Massachusetts Institute of Technology (MIT), which involves a structured dialogue to find out how the information technology (IT) industry can contribute to the prevention of human trafficking. The result, presented in 2012, was a system called Digital DNA, or Photo DNA, which allows any picture on the Internet to be broken up into small hashtags and tracked to find out who is viewing that picture. Digital DNA helps to identify networks of child predators and groups involved with child pornography. The project attracted Microsoft's interest, Avina continued, because—like any other IT company—Microsoft wants to be seen as an organization that works against the misuse of the Internet.

In talking about the effect of CSR programs on a company's reputation, Avina then acknowledged that simply publishing reports on the company's latest CSR initiatives is not an effective method of improving the company's reputation owing to the perceived lack of independence of such reports. Conversely, external evaluations—especially if published by reputable scholars in the field of CSR, such as a university professor—can be much more persuasive. An external, independent evaluation of the success of a company's CSR initiatives is essential to effectively improve the reputation of the company. For this reason, Microsoft recently hired a company named Mission Metrics, an external consultant specializing in the assessment of CSR initiatives, to evaluate the success of YouthSpark, an initiative that was launched by Microsoft at the end of 2012 and that pledges to affect the lives of 300 million youth by 2015 by providing access to IT skills courses.

Echoing Argüden, Avina then stated that companies are more likely to support CSR projects that match their core competencies and are in line with the company's mission. Microsoft, for example, is heavily engaged in programs that target youth, in part because young people represent a highly receptive market for IT products. Another important factor considered by companies when selecting a CSR program is its applicability to other contexts. In particular, companies will look for initiatives that can be replicated on a large scale, thus increasing the company's outreach and, ultimately, improving its visibility.

Avina then addressed the issue of CSR in the Arab world and reminded the audience that, before the Arab Spring, most donations within Arab countries came from local companies and were connected to religious holidays and to local cultural traditions. Those donations, albeit positive, did not represent a sustainable

and strategic way of promoting change in society. The donations did, however, demonstrate a willingness of the higher social strata of society to help the poor.

Multinational companies, such as ExxonMobil and other extractive industries, pioneered CSR in the Middle East. Nonetheless, their approach was standard CSR, with the company simply using the resources of the society and reinvesting some of those resources into development projects in the same community. Because of the prevalent role of governments and the relative weakness of civil society in the region, those companies aligned their policies with the governments.

The perfect example is Suzanne Mubarak, the former first lady of Egypt, who championed the anti-human trafficking cause. Mubarak, in turn, influenced other female leaders in the region—Queen Rania of Jordan, Sheikha Sabika of Bahrain, and Sheikha Mozah of Qatar—who also became involved. As a consequence, various private-sector companies understood that, to have a positive effect, they needed to be associated with activities driven by Mubarak and by her son, Gamal Mubarak. The problem arose when the power shift took place during the Arab Spring and businesses started to step away from such initiatives.

Following the Arab Spring, local companies have been changing the way they look at CSR and are now becoming more directly involved. They realize that they have a role to play in sectors traditionally managed by the government, such as education and health. Hence, the aftermath of the Arab Spring represents an opportunity to strengthen civil society and apply best practices to local companies. Those companies, however, need assistance in shifting from the charity model of donations for religious reasons to the model of strategically placing inputs into areas such as health and education. In this respect, the work of organizations such as ARGE Consulting—which brings a knowledge base to companies and NGOs—is paramount in the region.

A second positive outcome of the Arab Spring, Avina continued, is the increase in employees' activism. For the first time, staff members are able to influence the companies' actions. Some examples of companies' initiatives post-Arab Spring include the cleaning of Tahrir Square after the protests, the donation of blood, and the offering of training for youth. What those initiatives have in common are (a) the spirit of nationalism and patriotism and (b) a sense that everyone has something to offer.

A third important development of the Arab Spring is that large companies (including Microsoft) and their CSR programs are in a strategic position to support the democratic transition and address the key economic challenges of the region. The Arab Spring was caused by two factors: (a) lack of freedom and (b) lack of economic opportunities. Following the revolutions, companies started to provide management skills and resources to NGOs, which had previously been supported

by the government and by international donors. That change has helped NGOs become more independent and focus directly on promoting democratic principles and creating job opportunities. Microsoft, Google, and other IT companies, for example, supported electoral processes by training people and offering IT solutions. Microsoft also set up the Commission on Human Rights Abuse and supported it with IT and training. Additionally, the company supplied IT equipment to establish and support the commission that led to the constitutional committee in Morocco, including donating \$240,000 of software to the committee. It also supported any NGO that is neither political (with electoral goals) nor religious (with proselytizing goals) by donating a total of \$17 million worth of software to the region in just one year.

Talking about the concept of strategic CSR in the Arab world, Avina then noted that companies investing in the region must understand the national context and must focus on what he calls the “pain points.” Those are the areas of weakness in national governmental institutions, which companies have the skills and capabilities to address. In the Arab world, for instance, secondary and tertiary educational institutions have been accused of not providing students with the technical skills they need to enter the job market. Microsoft responded to this need by developing the Employment Portal, which offers more than 400 free courses—some that teach entrepreneurship skills—to the local population. The Employment Portal also offers mentorship and job placement systems and can be accessed through the Internet and through second-generation (2G) cell phones.

Avina concluded his presentation by mentioning two major challenges that affect the Arab world today: lack of employment and lack of entrepreneurship skills. Throughout the Middle East, excluding Turkey, 60 to 80 million people will need jobs in the next 10 years in economies that are unstable and do not attract much foreign investment. Those are the same people who have overthrown governments. Unfortunately, they will soon discover that finding a job is not easy in the turmoil that follows the overthrow of a government. Luckily, initiatives such as the Employment Portal can directly address this problem; however, this one effort is not enough. More companies and academicians must come together to develop initiatives that will increase entrepreneurial skills among the local population, help strengthen the economies, and ultimately promote stability in the region.

Giovanni Tamburrini, Assistant Professor of Business Law and Ethics, SolBridge International School of Business, South Korea

Giovanni Tamburrini started his presentation by asking conference attendees the following question: “Is it lawful, efficient, and effective to run a state as a business corporation?” By drawing parallels between theories of corporate management and

political theories of state creation, Tamburrini offered a key to understanding the development of corporate social responsibility and its current role in shaping the behavior not only of companies but also of states. Quoting a 2006 study by Timur Kuran, Tamburrini noted that the main objective of companies today is durability, not, as is often stated, the simple maximization of shareholders' profit. From this perspective, profitability and CSR become instruments for the pursuit of durability and long-term preservation of the company. Similarly, as theorized by Locke and Montesquieu, the ultimate goal and main national interest of states are preservation of the state. Such preservation is achieved through a social contract between the state and the people—the constitution, which encompasses the inspiring principles by which to run the state's institutions.

A company's equivalent of the constitution is the articles of association. In this regard, a difference between companies and states emerges: constitutions are a list of social values, but articles of association are, for the most part, a list of regulations aimed at promoting the profit of the company. The recent economic downturn has demonstrated, however, that even the state cannot be run efficiently without financial resources. This is why, in the past five years, governments have started introducing in their constitutions a balanced-budget amendment clause. Tamburrini held that this transformation highlights a trend whereby states are increasingly adopting management theories traditionally held by companies. Given such a trend, Tamburrini asked, should we support such evolution and transplant the one vote–one share to the state level?

Provocative as it might seem, the question does not represent a completely new perspective. Rather, it is somehow evocative of John Stuart Mill's claim that "persons with greater intelligence and education should have extra votes in order that their opinions may have a greater influence." Intelligence and education, though, are difficult to measure; private assets are not. If one assumes that a positive relationship occurs between intelligence and education on one side and private assets on the other, and if private assets are obtained in compliance with the highest moral values, then a company-like, more effective, and efficient competition for the control would eventually take place.

**Wenqing Zhang, Assistant Professor of Operations Management,
SolBridge International School of Business, South Korea**

Wenqing Zhang continued Tamburrini's comparative analysis between the management of companies and the running of states by using political game theory. According to Zhang, society can be simplified as having two types of working classes: a productive class and an unproductive class. The two classes can be distinguished by their social contribution or, more specifically, by their tax

payments. Because the productive class is the backbone of society, it should be dominant, with the unproductive class in a subordinate position.

In a company, the one share—one vote system is fair and efficient because it allows those who are more productive to have more votes and thus more decision-making power. The system encourages productivity because it creates an incentive mechanism that rewards those who are more productive and pushes those who are less productive to become more so. In this situation, the Nash equilibrium—the concept of game theory, according to which the optimal outcome of a game is one in which no player has an incentive to deviate from his or her chosen strategy after considering an opponent's choice—is achieved. Each stakeholder receives a benefit that is directly correlated to the level of engagement in the company.

In Zhang's view, the same should be true for society, in which productive citizens would be rewarded through a one person—one vote system. In such a system, the productive class of society receives a higher number of votes than does the unproductive class. All citizens would still have a say and would have some level of social welfare guaranteed, but the system would stimulate all citizens to work harder to gain more influence on the decision-making process of the state so they could better protect their returns and interests. The Nash equilibrium, in this case, would have only one requirement: work harder.

Zhang concluded his presentation by conceding that the proposed system might not guarantee egalitarianism, but he maintained that this vote mechanism—inspired by the company's one share—one vote mechanism—is a more effective, more efficient model than the current one. Zhang stated that governments should adopt this type of system if they want to ensure the durability of the state.

Elie Abouaoun, Executive Director, Arab Human Rights Fund, Beirut, Lebanon

Elie Abouaoun began his speech by talking about the mission and scope of his organization. He explained that the Arab Human Rights Fund is the first grantmaking human rights organization in the Arab region. Its mandate is twofold: (a) to provide technical and financial support to human rights initiatives and (b) to encourage philanthropy for human rights in the Arab region. Through this second mandate, the Fund attempts to engage the private sector and advises companies about how to mainstream human rights within their CSR programs.

After reminding the audience that compliance with human rights does not naturally contradict the profitability of a company, Abouaoun stated that although it is behind with respect to the Western world, the Middle East and North Africa region has made discernible improvements in the area of CSR over the past 30 years. As proof of this progress, many companies in the region are familiar with

and, at times, adopt instruments such as the Global Reporting Initiative standards, the International Organization for Standardization's Social Responsibility (ISO 26000) standards, and the UN Global Compact principles. Companies have become more accountable, as well, mainly because members realize the potential impact that negative social media campaigns can have on their businesses.

Three big challenges affect the advancement of CSR in the region, Abouaoun continued. The first is the contextual challenge. As a result of (a) the lack of transparency of most regimes in the region and (b) the traditional overlap of business and political interests, companies often are reluctant to support some human rights issues initiatives through their CSR programs for fear of government repercussion—in other words, the private sector is not responsive to human rights issues because it does not want to upset the political elite.

The second is the social challenge. Individual leaders in the private sector do not always view human rights as a priority, and they frequently behave in a way that contradicts human rights principles.

The third and final challenge is the technical challenge. Some companies do not fully understand the principles of CSR and often believe they are limited to small, ad-hoc initiatives such as installing recycle bins within their premises, using energy-saving light bulbs, and paying for landscaping the roundabout near their headquarters. In Abouaoun's opinion, academia can play an important role in addressing this challenge by educating the private sector about CSR and by assisting companies in developing targeted, long-ranging CSR initiatives.

Abouaoun concluded his speech by recognizing the good work of some companies in the region, including Aramex of Jordan, Etisalat in Egypt, and the Mansour Group and Foundation in Egypt. Those companies' success stories, he continued, prove that human rights and business are not antagonistic but, on the contrary, are essential factors for change and sustainable development in the region.

Session 2: Challenges and Developments in the Promotion of Human Rights, Labor Rights, Environmental Rights, and Anticorruption Policies in the Middle East

Deniz Öztürk, Turkey Adviser to the United Nations (UN) Global Compact

Deniz Öztürk opened the second session of the conference by discussing the origins and the two main objectives of the UN Global Compact, and she provided conference participants with a clear analysis of the organization's current status of work. The UN Global Compact, first announced by former UN Secretary-General Kofi Annan in 1999, is a strategic policy initiative that invites companies to align

their strategy in business operations with 10 universally accepted principles in the areas of human rights, labor, environment, and anticorruption; this is the initiative's first objective. The second objective is to catalyze business action in support of UN goals and broader development goals through collaboration and collective action.

The UN Global Compact is the world's largest voluntary corporate responsibility initiative, with more than 10,000 corporate participants and other stakeholders from more than 130 countries. In fact, more than 500 corporate signatories are in the Middle East and North Africa. A new model was launched in 2010 through the Blueprint for Corporate Sustainability Leadership, which aims to inspire advanced corporate performers to (a) reach the next level of sustainability performance by defining criteria for corporate sustainability leadership and (b) define the next decade of the initiative.

After highlighting that six of the principles specifically address labor rights as human rights, Öztürk discussed the implications of the UN Global Compact on human rights and sustainability policies and practices. The first principle, "Businesses should support and respect the protection of internationally proclaimed human rights," emphasizes two concepts: respect and support. Respect means avoiding human rights infringements and addressing adverse impacts that may occur, including preparing for future prevention. Respect is the minimum requirement.

The second concept, support, refers to additional voluntary actions that go beyond respect to make a positive contribution to advance human rights. Support refers to outward actions that increase businesses' positive influence on society. The United Nations encourages the expansion of the number of companies that are taking those types of actions.

One of the most important developments with respect to business and human rights is the June 2011 adoption by the UN Human Rights Council of the Guiding Principles on Business and Human Rights (Guiding Principles), which is a global standard for preventing and addressing the risk of adverse impacts on human rights linked to business activity. The Guiding Principles, endorsed by governments around the world, are based on three pillars: (a) state duty to protect against human rights abuses, (b) corporate responsibility to respect human rights, and (c) access to effective remedy.

Focusing on the second pillar, Öztürk stressed that businesses cannot simply assert that they respect human rights; they must demonstrate their respect and set boundaries between state duties and corporate responsibility. Companies also should have a human rights policy statement in place. Companies around the world—including those in the Middle East, North Africa, and Turkey—often lack such a policy statement. Having effective grievance mechanisms in place and

effectively engaging the stakeholders are other important elements that promote the respect of human rights by companies. Öztürk then mentioned a few business and human rights topics that companies are increasingly addressing, including water and land issues, conflicts, mineral issues, and working conditions in the supply chain.

Öztürk also emphasized the mission and goals of the Women's Empowerment Principles (WEPs), a joint initiative of UN-Women and the UN Global Compact. The WEPs, which have already been adopted by a group of a dozen leading companies in Turkey, are a set of seven principles for businesses and offer guidance on how to empower women in the workplace, marketplace, and community. No companies from the Middle East have yet adopted the WEPs but Öztürk hopes this situation will soon change and more companies in the region will engage in collective action to achieve gender equality. Öztürk concluded her presentation with a summary of the UN Global Compact Turkey Local Network's collaboration with local networks in the Gulf countries and Iraq to advance WEPs in the region.

Yadollah Dadgar, Professor of Economics, Shahid Beheshti University, Tehran, Iran

The next speaker, Yadollah Dadgar, focused on CSR trends in Iran. He started by stressing the relevance of Iran as an important case study in the Middle East, owing to its geopolitical location, its history, and its natural and human resources.

Dadgar identified three main CSR phases in Iran: the post-1980 phase, when CSR was established; the 1997–2004 phase, the period of political reform, when the country experienced moderation and CSR saw some progress; and the 2005–13 phase, when the political hard line led to the collapse of Iran's CSR initiatives. In Dadgar's opinion, the gradual growth of the private sector in Iran and peaceful popular movements, such as the Green Movement and the Arab Spring, have had a direct effect on the Iranian culture of CSR and have promoted synergies affecting socially responsible initiatives.

According to Dadgar, CSR is a self-regulating, human-oriented mechanism based on ethical and international standards. Although largely informal, it works as a common language that has the benefit of promoting communication between different countries and cultures in the era of globalization. He believes that this practice is important to address modern human and ecological hardships. Quoting Renee James, the president of Intel, Dadgar then argued that a key determinant of the company's success is its ability to advance leadership in corporate responsibility. He reminded the audience that many managers in Iran and around the world already believe that CSR is no longer optional but a duty for businesses that want to be successful. Many studies have demonstrated, he continued, that a

clear correlation exists between the financial improvement of businesses and their level of investment in CSR.

Giant companies that deliver essential services to more than 4 billion people in about 200 countries clearly have social responsibilities. One example is France Telecom-Orange (FTO), which has more than 250 million customers in 45 countries in Europe, Africa, and the Middle East. The managers of FTO understand their responsibility, he said, and have included CSR in the organization's strategic project for 2015.

CSR encompasses economic as well as ethical and legal responsibilities. Economic responsibility includes satisfying customers, generating a fair rate of returns, creating new jobs, promoting innovation, contributing to eradicate poverty, and facilitating upward mobility. One of the key factors for a company to be successful, therefore, is establishing a dialogue with its stakeholders.

Talking specifically about Iran, Dadgar conceded that the private sector has never been well developed in Iran and that, especially between 2005 and 2013, the public sector has absorbed major parts of the economy, thereby almost completely crowding out the private sector. According to Dadgar, about 85 of the 100 largest Iranian companies are governmental or semigovernmental, whereas before the 1979 revolution, private companies existed that were concerned with CSR; those companies are now gone.

The main lesson here, said Dadgar, is that CSR depends on a well-developed private sector. He concluded by expressing his hope that the new Iranian political landscape, in place since the past election, will contribute to a renewal of the country's private sector and, consequently, of a renewed wave of CSR initiatives.

Mohammad Jafar Ghanbari, Assistant Professor of Law, Shahid Beheshti University, Tehran, Iran

Mohammad Jafar Ghanbari started his presentation by discussing the relationship between CSR and the law. To Ghanbari, two important legal aspects determine the relationship between law and CSR. The first consideration is whether CSR reflects the law, be it current or future. The second is the possibility of making multinational enterprises (or transnational organizations) legally accountable.

With regard to the first issue, Ghanbari argues that the legal system should have two tiers: one for larger transnational corporations and another for smaller companies. In this case, the organizations would be ranked according to (a) number of foreign affiliates, (b) number of employees, (c) number of countries where the corporation is present, (d) amount of foreign assets, (e) sales volume, and (f) the link that binds all those legally separated entities together as one

economic unit. To highlight the importance of dealing with this aspect of business law, Ghanbari reminded the audience that, of the 100 top economies in the world, 51 are corporations.

Regarding the second issue, which deals with the accountability of transnational organizations, Ghanbari conceded that a universally accepted definition of CSR does not exist. Nonetheless, he believes that the core meaning of corporate social responsibility is clear: corporations' activities must be beneficial, not harmful, to society. Corporations have a duty to observe the requirements of sustainable development. This idea is also highlighted by the International Law Association, especially regarding development, good governance, environmental protection, and human rights.

Ghanbari then drew a parallel between the theory of CSR and Herbert Hart's concept of law, which makes a distinction between "to be obliged" and "to be under an obligation." According to Hart, not every law requires a sanction because if people respect a rule voluntarily as the result of an internal sense of obligation, the law is still relevant and effective, even without the existence of a sanction for its breach.

A similar distinction between morality and law exists in international law, in which the concept of CSR is gradually becoming an inspiring principle of many international regulations, including the International Court of Justice statute; of various international treaties; and of international customs. Human rights, for example, are already part of international law, and they are also present in the national laws of most countries (even though they are not always respected). Are those obligations applicable to multinational enterprises, he asked? The answer, according to Ghanbari, is yes. The concept of CSR is embedded in the notion of sustainable development, and the current legal framework is now developing and making multinational enterprises more directly accountable. As such, the same legal remedies that are available to those enterprises when they make claims against states should be also available to their stakeholders that have a CSR-related claim.

Ghanbari concluded his speech by presenting some recommendations to help promote CSR within the legal framework: (a) encourage the codification, legislation, and legalization of generally recognized CSR standards into national law as rules of behavior with proper sanctions; (b) adjust the terms of international investment agreements, bilateral investment agreements, and free trade area agreements to include CSR standards; (c) strike a fair balance between the protection traditionally granted to foreign investors and the promotion of environmental protection, observance of human rights, and good corporate practice, thus benefiting society's greater good; (d) encourage developing countries to adhere to the Organisation for

Economic Co-operation and Development (OECD) guidelines (to comply with the guidelines, a country does not have to be a member of the OECD; in fact, 44 developing countries already adhere to those guidelines); (e) promote national laws similar to the Alien Tort Claims Act, which places breaches of CSR standards on the same level as other torts (or breaches of law), therefore treating both situations the same way; (f) make sure that the host state's CSR-related regulations are given priority over other provisions or relevant investment agreements; and (g) recognize group actions in case of grave breach of CSR standards, such as in the case of the Bhopal disaster in India and other disasters in Bangladesh.

Yaser Khalaileh, Associate Professor of Law, College of Law, Qatar University, Doha, Qatar

Yaser Khalaileh wrapped up the second session by discussing the international recognition of environmental rights in the face of multinational corporations.

Khalaileh started by highlighting that domestic legislation is the only legal instrument that binds corporations. Although important, international laws, ideas, and treaties related to environmental issues are addressed to states, which must, in turn, generate domestic legislation that binds and compels individuals, civil society, and corporations. Domestic environmental legislation is thus the only instrument that can legally enforce environmental standards on corporations. In this regard, international law is basically soft law and, consequently, difficult to implement.

To what extent, Khalaileh then asked, does international law cover environmental issues? Is there an international environmental right that could be reflected in national and regional courts (such as the European ones)? And is it possible for individuals to actually pursue legal solutions or resolutions for their individual or group problems vis-à-vis corporations' failure to respect their corporate social responsibility? The answer is yes. According to Khalaileh, environmental international laws are based on the idea of sustainable development, which can be defined as the pursuit of economic objectives in a way that is compatible with environmental standards and social growth.

In Khalaileh's view, though, the current legal framework is not strong enough to deal with the environmental challenges, and the environmental movement should be inspired by and mirror strategies used by the human rights movement, which has written a success story in the past few decades. Human rights violations have been brought to courts worldwide; they have been addressed successfully in the European Convention on Human Rights and the European Court of Human Rights.

Fortunately, environmental protection also has been addressed in courts, and individuals have been able to bring to the attention of the courts cases of corporations that fail to respect or observe basic CSR principles, said Khalaileh. However,

environmental rights are not yet as well established as human rights. This discussion is important because, in recent decades, corporations—which are frequently private and multinational—have increased their power and reach, and they now occupy a critical economic position worldwide. Their commercial appetite is growing, said Khalaileh. Therefore, the time has come for the international community to set social responsibilities standards that bring to society the mechanisms necessary to enforce environmental responsibilities on those organizations.

The first steps toward comprehensive international environmental legislation were the Stockholm Declaration, the World Commission on Environment and Development Report, and the Rio Conference. Khalaileh argued that those documents reflect a marginal advancement toward the recognition of individual and group rights to a clean environment. Nonetheless, some improvements have been achieved. One example is the 1998 Aarhus Convention, which ties environmental rights to human rights on the basis of two fundamental principles: early public participation and effective public participation. The problem here, said Khalaileh, is that the implementation of the Aarhus Convention has focused primarily on access to information, and public participation is still in its initial stage.

Also on the regional level, only a few binding human rights treaties include the right to a clean environment. One good example is the European Convention on Human Rights. Although the original document contained no specific provision to that effect, the European parliament has added such a provision.

Khalaileh concluded his presentation by stressing that—for the right to a clean environment to be meaningful in the international arena—the environmental right must be defined with sufficient legal certainty to enable claims to be brought before the courts, and it must be defined in a way that helps countries understand the scope of any international agreement to protect such rights.

Session 3: CSR in the Arab World: Legal Framework and Best Practices

Tariq Hammouri, Dean, Faculty of Law, University of Jordan, Amman, Jordan

Tariq Hammouri began the session by speaking about the challenges faced by the corporate social responsibility movement in Jordan. Often described simplistically as “corporate citizenship that involves a corporation incurring costs that do not provide an immediate financial benefit to the company but instead promote social and environmental change,” CSR in Jordan often is misunderstood by companies.

Some companies are engaged in activities for the good of the community—activities that are sometimes related to the company’s scope of work—and they do

not see the need for further action. In addition, such activities face legal challenges in Jordan. Some companies argue that a company's primary objective is to maximize shareholders' profit and that noncommercial activities are not among the allowed company objectives under Jordanian law. Thus, CSR activities that give money or money's worth of services or products to the community could be challenged as a breach of a company's fiduciary responsibility to its shareholders. Moreover, CSR decisions are business decisions that are made by the company's chief executive officer (CEO) or board of directors. Because the main goal of CEOs and directors is to generate profits for their companies, they see CSR initiatives as something that would decrease profits.

CSR activities are beneficial to companies over the long term, said Hammouri. Socially responsible activities promote themselves and improve the company's reputation. In addition, investments in the community where the company does business may benefit the firm through improvement in the business environment.

According to Hammouri, Jordan used to have a provision in its companies' laws determining that 1 percent of the firm's net profit must be spent on initiatives such as research, development, or education. Recently, this provision was replaced by another that says such money must go to the Ministry of Higher Education, which will use it to promote research and to assist in student activities. Beyond that provision, whether CSR is fully compliant with the law is still a controversial issue, concluded Hammouri.

Nazzal Kisswani, Professor of Law, University of Qatar, Doha, Qatar

Nazzal Kisswani continued the discussion by talking about best practices and future developments of CSR in Qatar. According to Kisswani, a general awareness of CSR principles in Qatar is demonstrated by a state CSR framework that falls under the 10 principles of the UN Global Compact concerning human rights, labor, environment, and the fight against corruption. Government partners, including NGOs and private-sector institutions, seem to increasingly adhere to consistent practices that respect principles of social responsibility and commercial activity. Furthermore, the Qatar National Vision 2030 aims to establish a society based on principals such as justice, benevolence, and equality. The four primary focuses of that vision are (a) human development, (b) social development, (c) economic development, and (d) environmental development.

The Qatar National Vision 2030 also has confirmed Qataris' commitment to international treaties and instruments, particularly those related to social responsibility, such as the UN Universal Declaration of Human Rights, the International Labour Organization (ILO) Declaration on Fundamental Principles

and Right at Work, the UN Rio Declaration on Environment and Development, and the UN Convention against Corruption.

According to the principle of private-sector participation in development processes, governmental social responsibility initiatives are combined with the Ministry of Business and Trade, which works to significantly maximize benefits for development. The Qatar Chamber of Commerce also continuously stresses its belief that CSR is an essential and integral element of its organizations. It has developed a clear policy about social responsibility that reflects the organization's approach to achieving business goals while maintaining a responsible attitude toward the community. To emphasize this point, Kisswani stated that the Qatar Chamber of Commerce considers sustainability a key element of its business models and supports green technology initiatives and recycling programs. In fact, the Chamber of Commerce has worked to ensure the sustainable use of natural resources while providing decent working conditions for all stakeholders in the supply chain.

No discussion of CSR in Qatar would be complete without mentioning the work of extractive industries with the state, said Kisswani. Mining activities generate controversy because they create great wealth for corporations at the expense of the rights of affected communities. Thus, transparency and social responsibility in this industry are major concerns in Qatar. In fact, in 2011, the Secretariat of the United Nations called for the government to establish a robust mechanism for transparency and corporate social responsibility for Qatar's extractive industries. According to Kisswani, the government believes that the state should provide more effective means in its domestic laws to provide protection, remedy, and redress for communities that have suffered from the actions of mining corporations.

Multinational companies offer further examples of best practices in the private sector. ExxonMobil contributes to Qatar's emerging energy industry in what seems to be a safe and environmentally responsible manner with an emphasis on supporting the country's way of life, Kisswani said. Promoting the development of the community, of education, and of the next generation of scientists and engineers is a well-established provision in the understanding between Qatar and ExxonMobil, as exemplified by the company's relationship with Qatar University. In general, stated Kisswani, multinational corporations make a range of voluntary contributions to sports, human capital development, road safety, environmental awareness, and culture in Qatar.

National companies also contribute to CSR. In Kisswani's view, the work of Ooredoo Company has exemplified the best practices. In the health care sector, Ooredoo has offered sustainable support for a kidney center that provides dialysis facilities that treat 400 patients every week. In addition, the company has been

a major donor to an annual free medical camp for low-income workers and has encouraged its staff to get free medical checkups on Ooredoo Health Day. Concerning the environment, Ooredoo has launched a recycling program and moved all its customers to electronic billing to avoid paper waste.

The banking industry is another good example of CSR best practices. Kisswani highlights that the Doha Bank calls itself a green bank and has policies covering three areas: people (social development), planet (environmental development), and profit (economic development encompassing the idea that economic growth must be sustained to finance environmental and community responsibilities).

Kisswani concluded his presentation by saying that the state of Qatar encourages all companies listed in the Qatar Stock Exchange to practice CSR by enforcing Law 13 of 2008. The regulation determines that 2.5 percent of the net annual profits of public corporations should be collected by the government to support social, sportive, cultural, and charitable activities.

Amel K. Abdallah, Assistant Dean for Postgraduate Studies and Research, College of Law, Sultan Qaboos University, Oman

Amel K. Abdallah concluded the session with a discussion of the current status of CSR in Oman and the influence of Islamic Sharia on the Omani legal system today. According to Abdallah, CSR can be seen as a tool of development, which is how the Omani government treats it. By linking businesses and society, CSR ensures a balance between law, ethics, and profit to protect and develop human and natural resources.

The Omani legal system is profoundly influenced by Islamic Sharia, said Abdallah, which means that social responsibility goes back 14 centuries in the country. In fact, traditional definitions of CSR are based on the Qu'ran and the Sunnah. An article in the Qu'ran, for example, says, "Righteousness is not to turn your face toward East and West in prayer, but righteousness is the one who believes in Allah, the last day, the angel, the book, the prophet, and who gives his money, in spite of love for it, to kinsfolk, orphans, poor people, and wayfarer."

Furthermore, different Hadiths of the Prophet Mohammad in the Sunnah encourage good behavior of traders by talking about trade and business, prevention of monopolization, and corruption. Some examples are "All of you are guardians and responsible to his subjects," "God bless tolerant men in case of sale or purchase," "Monopolization is a wrongful act," and "Gifts for the responsible is considered a bribe."

Abdallah then spoke about CSR in Oman and explained how national legislation largely covers the four UN Global Compact areas of CSR, namely, human rights, labor, environment, and anticorruption.

Regarding human rights, all civil, economic, and political human rights are guaranteed by the 1996 Omani Constitution. The Omani Penal Law of 1974 and the Omani Procedural Law also provide the required protection of such rights. In 2008, Royal Decree 124 created the National Committee of Human Rights, which is responsible for investigating any abuse of human rights in Oman and for dealing with the concerned authorities to prevent violations and abuses. Moreover, Oman has ratified several international conventions concerning, among other things, prevention of discrimination and the Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict.

On labor issues, the United Nations emphasizes that corporations are bound to encourage freedom of association and to eliminate any kind of forced, compulsory, and child labor. Companies are also forbidden from practicing any kind of discrimination related to employment and occupation. Again, Abdallah believes that those principles are clearly reflected in Oman's laws. The national labor law, issued by Royal Decree in 2003, prevents discrimination among workers; outlaws child labor (younger than 15 years old); and guarantees the right of organized women's labor, according to their needs and the nature of their work.

Regarding the environment, Oman has two royal decrees that deal with environment protection and pollution. A third royal decree specifically targets the protection of sources of running water. All three decrees emphasize that corporations have responsibilities concerning the Omani environment and can be punished if they do not respect Oman's legislation. In practice, however, both the government and the private sector need to advance in the implementation of those laws, conceded Abdallah.

Finally, when it comes to corruption, Omani Penal Law criminalizes officials' misconduct, bribery, misuse of public function, and misappropriation of public money. Nevertheless, in Abdallah's evaluation, the current laws are not enough, and new regulations must be created to effectively fight corruption. She emphasized that anticorruption principles are the most important ones in CSR, because 50 percent of the governmental corruption is connected to the private sector. In this context, penal laws are not enough to deal with this problem, and Abdallah emphasized that Oman could improve its efforts by studying the examples of countries such as Jordan, Kuwait, and Qatar, which are more advanced in this area.

In summary, although Oman does not have specific CSR laws, most of the principles are covered by general regulations, but Abdallah does not believe the regulations to be enough. Oman has national and multinational corporations—such as Shell, HSBC, Nawras, and Al Zubair—that promote CSR initiatives in different fields. However, they see this work as a form of charity. According to Abdallah, charity is not the correct approach.

CSR has a mandatory nature in an Islamic society, and the government must make sure that such initiatives take place. More specifically, the government must encourage, protect, and improve CSR initiatives in the private sector; support the mandatory nature of CSR (especially in the areas of human rights and corruption) through a set of detailed rules that implement the principles stated by the UN; and organize the triple relationship between corporations, government, and society within a legal framework specifically for CSR.

Abdallah concluded her presentation stating that, to have CSR effectively functioning as a developmental tool, corporations must be required to develop annual initiatives under the supervision of the Ministry of Social Affairs. Moreover, to encourage more investments by the companies, the government could consider the possibility of tax relief connected to CSR initiatives. Abdallah also recommended that the Omani government modify its penal law to consider each corporation a moral person in case of violation of the regulations; create a national fund, financed with mandatory contributions by corporations, to be used to identify victims of violations; entitle the National Committee of Human Rights to proceed in penal actions against corporations that violate human rights rules; and create an integral framework targeting cases of corruption.

Session 4: Islamic Banking, Trade Law, and Corporate Social Responsibility

Nehale Farid Mostafa, Dean of Faculty of Commerce and Business Administration, Beirut Arab University, Beirut, Lebanon

Nehale Farid Mostafa, chair of the conference, started her presentation by acknowledging that business ethics is one of the main factors of any business curriculum, but she emphasized that the concept of corporate social responsibility goes much further. Mostafa stated that she hoped that, by the end of the conference, a solid definition of CSR would emerge that could be used to disseminate the concept in the Middle East.

Acknowledging that corporate social responsibility is difficult to clearly define, Mostafa reminded the audience that, when the topic is discussed, what is really under scrutiny is the relationship between businesses and society. CSR involves corporate governance and transparency, human rights, labor rights, social environment, and environmental impact. In fact, precisely because CSR brings together so many areas, the concept is confusing to many people.

CSR is related to the overall effect that companies have on society. It is about globalization, sustainability, and governance, and it goes beyond economic and legal issues. In Mostafa's view, CSR is the most important social movement of our

time. Agreeing on a precise definition of CSR is difficult because of the different economic, cultural, and legal contexts that the concept involves in different corporations and in different societies. CSR in an NGO, for example, is completely different from CSR in a company such as Coca-Cola.

Mostafa explained that CSR has gone through three phases. In the 1950s, it was on the rise; in the 1960s and the 1970s, it grew; and from the 1980s to the 1990s, it proliferated. Mostafa then explained two CSR concepts. The first concept was that of Archie Carroll. According to Carroll, the four types of CSR are economic, legal, ethical, and discretionary. Economic CSR deals with companies' responsibility to achieve a return on investment. Legal CSR concerns how corporations deal with the legal framework and its requirements. Ethical CSR involves activities that are not codified into law. Finally, discretionary CSR is philanthropic contribution. Those four types of CSR could be organized in a pyramid, starting with economic responsibility at the base, legal as the next step, ethical next, and discretionary or philanthropic at the top. The combined four elements equal total responsibilities for a company or business. The economic and legal steps are required, the ethical one is expected, and the philanthropic step is desired, explained Mostafa.

The second concept of CSR was developed by Geoffrey P. Lantos, who sees CSR as comprising three components: ethical, altruistic, and strategic. The ethical area goes beyond economic and legal obligations. The philanthropic area is genuine but optional. And the strategic area is a long-term investment that will yield financial return. In comparing it with Carroll's approach, Mostafa notes that Lantos's ethical component includes what Carroll presents as economic, legal, and ethical responsibilities. Lantos also introduces the idea of a strategic CSR, which Mostafa considers appealing because it shows that the company can achieve shareholders' profit interests and, at the same time, benefit its stakeholders. Strategic CSR reconciles social and economic goals and can generate returns to the company in the long run. This objective is especially important in developing countries, where companies face serious macroeconomic problems, which decrease the drive to achieve CSR. When companies are trying to become viable and to secure returns to their shareholders, they are not willing to spend more money than necessary by investing in philanthropic actions. In this context, the idea of a strategic CSR that ensures future returns to the organization is an important one, asserted Mostafa.

Mostafa next discussed the findings of two research projects: the first is a study of Lebanese companies, and the second is a comparative study of Lebanon, Syria, and Jordan. Before presenting the studies, however, she highlighted the context of Lebanon today. According to Mostafa, Lebanon is in the process of reconstructing its political, economic, and social structure. The postwar government dedicated itself to stabilizing the country, but the task was not entirely completely. Thus, the current government faces more problems and has been forced to deepen its

stabilization policies. Mostafa sees the current political and economic environment in Lebanon—and, more broadly, in the Middle East—as uncertain and worrisome, which is the context in which the research studies were developed.

The first research project involved a sample of eight companies in different industries, including information technology, banking, insurance, manufacturing, and hospitality. Interviews with managers indicated that all eight companies had a philanthropic conception of CSR but that their social interventions were different. An example of their idea of philanthropy was cultural development, explained Mostafa, which was achieved through donations to tackle educational and learning problems. Strategic CSR was practiced in only two of the eight companies, both of them subsidiaries of multinational corporations. In both cases, the mother company transferred the concept of strategic CSR to the Lebanese subsidiary. When local companies practice CSR, however, they do only philanthropy, with no link between philanthropic action and long-term strategic goals. Moreover, none of those companies had a CSR office; instead, most designated the public relations office as being responsible for CSR. None of the eight companies tried to measure the effect of their philanthropic actions. In other words, the companies did not institutionalize their CSR activities, thus putting in question the sustainability of such policy.

The second research project—comparing Lebanon, Syria, and Jordan—used the Quazi and O'Brien model which looks at CSR from a classical point of view and uses horizontal and vertical axes to represent different concepts of CSR. The classic idea of business, which is subject to a set of rules and regulations and is responsible for maximizing profit, is represented in the horizontal axis. The vertical axis represents social action, with its costs and returns. According to Mostafa, the horizontal axis represents the company's narrow responsibility (business responsible for business), while the vertical axis represents its wide responsibility (business responsible for the entire society). The vertical axis, therefore, indicates the benefits generated by CSR and its strategic approach.

The validity of this model was tested in three Middle Eastern countries, using a questionnaire given to managers in 185 Lebanese, 76 Syrian, and 72 Jordanian companies. Researchers found that, in Lebanon, companies mostly had a broader concept of CSR, with 19 percent of the managers presenting a classical view of CSR, 61 percent a modern view, and 20 percent a philanthropic view. In Syria and Jordan, the numbers of managers taking a modern view were not as high, but the modern view was still the most common approach. In Syria, 15 percent of the managers held the classical view, 36 percent the modern view, 29 percent the philanthropic view, and 20 percent the socioeconomic view. The numbers for Jordan were 27 percent for the classical view, 53 percent for the modern view, and 20 percent for the socioeconomic view. In other words, stressed Mostafa, although

some managers in Middle Eastern companies still believe that the sole goal of a business is to generate profits, an increasing number perceive CSR as an activity that adds value to a corporation.. Nonetheless, the research also indicates that, when compared to other parts of the globe, Middle Eastern businesses still lag behind regarding donating to society to gain a return—usually related to improving the company’s image.

Mostafa concluded her presentation by emphasizing the need to impress on businesses of developing countries the idea that CSR and profit are not inimical concepts. CSR must be considered in the light of different cultures and contexts, but socioeconomic factors are always relevant because CSR is a social concept. The good news is that the results of research studies such as the ones presented indicate that a modern view of CSR is becoming increasingly prevalent in the Middle East.

Mahmood Bagheri, Assistant Professor of Law and of Banking and Financial Regulation, Tehran University, Iran

The discussion continued with a presentation by Mahmood Bagheri. Before dealing specifically with the case of Iran, Bagheri talked about companies and financial systems in general. In his view, the creation of companies is fundamental to economic development. Nevertheless, when companies are created, they generate winners and losers as well as competing interests, especially those of shareholders and stakeholders (broadly understood here as employers, creditors, the public at large, and so forth). To find a balance between those competing interests, legal mechanisms must be designed to determine an optimal distribution of losses and gains. Such legal mechanisms represent what is referred to as *corporate governance*.

In the banking sector, corporate governance can be divided into the law of agency, company law, and securities regulations, and it varies depending on the type of company—local business, multinational corporation, public company, or state-owned company. In Iran, many companies are state owned, but this fact does not necessarily mean that they cannot behave according to traditional commercial paradigms, thereby treating the government as a shareholder that buys shares in the stock exchange, just like any other investor. This concept applies especially to companies that do not serve a public function but a purely commercial one. In this case, companies should be monitored and controlled according to the concept of corporate governance: through legal and managerial mechanisms.

The banking industry, however, is a unique market because it creates systemic risks and negative externalities that must be addressed, which is especially true in countries such as Iran, where 83 percent of the banks are state owned. Such

countries do not have a developed capital market and are mainly focused on banks as intermediaries of the money market. Theoretically, stressed Bagheri, mechanisms could be developed to avoid systemic risks. Nonetheless, banks usually take risks that affect the entire financial system and expose the whole society to even greater risks. Those risks also endanger depositors, who are one of the banks' most important stakeholders.

This situation creates a conflict of interest between managers and shareholders on one side, and stakeholders (mostly depositors) and the public at large on the other. Therefore, developing a governance system that is able to accommodate the different interests is essential. This system should involve both legal mechanisms and management regimes of control, such as the inclusion of a certain number of nonexecutive members on the board and frequent financial reports. Legislation in Iran, however, does not provide effective guidance in this area. The problem is compounded by the government's attempt to make the banks Islamic, which is not realistic in the current market. It forces banks to bypass the law by resorting to means that are not legal, thus fueling corruption. Restrictions imposed on bank ownership also are unrealistic. To avoid wealth concentration, a person may not own more than 5 percent of a bank and a company may not own more than 10 percent. Banks also must be on the stock exchange and abide by tight security regulations.

The effect of those strict regulations on the banking industry is that corporate social responsibility becomes an alternative distributive mechanism, thereby replacing taxation or subsidies as a means to obtaining a more fair distribution of resources. This situation confuses the discourse, however, and undermines the potential of a functional market economy.

If one is to build an effective governance system, Bagheri concluded, the first step is to identify the distribution of responsibilities of corporations within a hierarchical society. In other words, what is the position occupied by corporations in that specific society? By clearly defining the government's versus the banks' responsibilities to society, the country will be able to better address the problem of limited access to financial capital and will benefit from a more liberalized market economy.

**Soheila Parvin, Associate Professor of Economics at Allemah
Tabatabaei University, Tehran, Iran**

Soheila Parvin focused the discussion on economic growth. She introduced Simon Kuznets's hypothesis of a natural cycle of economic inequality that is driven by market forces that first increase inequality and then decrease it when an average income is attained. This hypothesis has never been proven in developing countries

and has been questioned even in developed countries, stressed Parvin. The recent economic crisis shows that polarized income distribution can limit economic growth and could cause a fundamental change in the global economy. Some people also believe that the cause of the economic slowdown in developed countries is the shrinking middle class, with the downturn being attributed to polarization of income distribution in the OECD countries.

Parvin sees American household consumption as a major driver of the world economy in the past 20 years. Therefore, the rise of the middle class around the world—in countries such as China and India—has the potential to generate a new long-term source of global aggregate demand. She predicted that middle-class consumption will decrease in the United States and Europe from 64 percent to 30 percent in the next two decades, while Asia Pacific middle-class consumption will jump from 23 percent to 59 percent.

A large middle class brings greater and more stable demand, and a larger share of revenue in the hands of this group leads to higher growth, better infrastructure, and better economic policy. It also improves the quality of health and educational services because the middle class is willing to pay more for it. This group plays an important role in capital formation and tends to press for institutional reforms, thereby improving the quality of governmental social policies.

Parvin highlighted that industrialization entails fixed costs because international trade is a costly activity. A country thus needs a domestic market large enough to overcome such cost, which is possible only if income is concentrated in the middle class. According to Parvin, the middle class is not *created* through growth; it is, in fact, *the source* of growth.

Shifting the focus to Iran, Parvin said that the country experienced high rates of economic growth, especially in the 1970s. This growth, however, was not sustained because factors such as a variation of oil revenue, a large public sector, restrictions on the private sector, and income inequality shrank the domestic market for manufactured goods. As in other oil-producing countries, income distribution in Iran has special characteristics. In Iran's case, the government tries to reduce poverty by using oil revenue to help low-income groups, without decreasing other expenditures. However, income distribution remains an unbalanced process, with high levels of inequality and budget deficit.

Parvin showed that, in Iran today, about 50 percent of the income is in the hands of 20 percent of the population, while the poorest 20 percent live with only 5 percent of the country's income. During the Iran-Iraq War, the top 10 percent of the population received 20 times more income than the 10 percent poorest households. In the war years, all groups faced negative growth rates. The lowest-income group

of the population, however, was relatively less affected because it could benefit from the government's protection policies and NGO initiatives that provided the group with basic goods.

The middle class, conversely, shouldered most of the burden of inflation. This situation limited the development of manufacturing industries in Iran, thus maintaining high levels of fixed cost of industrial output. One policy that can be used to address this problem is consumption subsidies, explains Parvin. The downfall of this economic instrument is that it generates inflation.

In summary, the way the Iranian economy reacted during the war had negative impacts on the country's growth. Parvin highlighted that her studies on the subject showed that variables such as urbanization, government size, and inequality hurt a country's growth, while the size of the middle class and the ratio of labor participation have positive effects. If the middle class is so fundamental to a country's economic growth, the next question to be answered is what contributes to increase the size of the middle class. Parvin's work offers some important clues on this topic. Her studies showed that the growth of the middle class is positively related to lower fertility, higher education, higher growth of capital rates, and capital labor ratio participation and is negatively related to the size of the domestic market. This issue is especially sensitive in Iran, she emphasized, where the demand side of the economy is extremely relevant because of the large public sector and the income generated by oil exports.

Arfan Alkhatib, Associate Professor of Law, Ahmad Bin Mohammed College, Qatar

The session closed with a presentation by Arfan Alkhatib, who spoke about fundamental rights and freedoms in the business sector in light of the UN Global Compact principles. The UN Global Compact consists of 10 principles in four main areas: human rights, labor, the environment, and anticorruption. Those four topics are supported by the International Labor Organization (ILO), the UN Environment Programme, and the UN Office on Drugs and Crime.

According to Alkhatib, to better understand the legal framework of workers' rights in the countries that form the Cooperation Council for the Arab States of the Gulf (GCC), one must realize that the labor environment is based on three particularities: in population, in funds, and in employment. The high pace of economic development and the lack of national human resources in the GCC countries led to an environment in which nonnational workers dominate the different labor levels (employers, corporations, and employees). Consequently, the population grew from 21 million in 1991 to 46 million in 2011, and that number

will likely continue to grow. The increase in population created a range of issues for countries such as Qatar, Kuwait, and the United Arab Emirates because their citizens became a minority in the labor market. Characteristics within those countries make the situation even more complicated. In general, Alkhatib said, the labor force is composed of low-cost, nonselective, low-skilled, temporary, legally illiterate immigrants who are hired to perform physically demanding tasks such as domestic work.

According to Alkhatib, GCC countries protect the fundamental rights and freedoms of the foreign workers. Civil rights, such as religious freedom and freedom of expression, are upheld unless inconsistent with the local public ethics and morals. As an example, workers are allowed to choose their own religion, but they are not allowed to practice it while working. Workers also have their professional dignity rights respected—through nondiscrimination in employment and occupation, for example.

Alkhatib emphasized that every GCC country has agreed to the ILO's conventions regarding the elimination of all forms of forced and compulsory labor. They have also agreed to eliminate child labor. Nevertheless, the states are frequently criticized for their system of worker sponsorship, and many are reconsidering such rule. In fact, Bahrain has just abolished it. Another fragility of the GCC countries is the fact that freedom of association and the right of collective bargaining are generally guaranteed only to their own citizens.

Alkhatib concluded his presentation by stressing that—although the GCC countries deal with fundamental rights and freedoms in an effort to comply with international laws and standards—real compliance still is frequently challenging. Companies—especially multinationals—often try to invoke national laws to avoid demands brought by international standards. Alkhatib recommended that those businesses form effective units to promote CSR principles and practices in their host countries. He also urged the GCC governments to ratify all international conventions related to civil, political, and socioeconomic rights.

Simona Marinescu, Director, Istanbul International Center for Private Sector in Development, United Nations Development Programme, Istanbul, Turkey

Simona Marinescu concluded the session by talking about the center's mission of helping businesses to transition from random CSR to strategic CSR and then to inclusive development. Marinescu welcomed Mostafa's proposal of including, in addition to the four principles of the UN Global Compact, the social environment component that shows how businesses can do good for the community, in addition to human rights, labor standards, transparency, and environmental sustainability.

However, the region still faces different challenges today in implementing CSR policies. The first challenge is the lack of consensus on a clear definition of the role of the private sector in development. Striking the right balance between competition and solidarity, Marinescu stated, is really difficult, and the center is trying to move slowly toward advising where, exactly, the line should be. With this goal in mind, the center is engaging with universities toward defining a series of indicators to measure what effect businesses are making on the life of the community and on the environment. This set of indicators is still missing, unfortunately, and although many companies make some contributions to the well-being of the community or the environment, they do not necessarily contribute to the sustainability of the economic system locally, regionally, and globally. This sustainability element is very high on the agenda. Indicators also are important to distinguish between the companies that truly are engaged in CSR and the ones that are not. Unfortunately, we have just learned that many multinational companies listed in UN Global Compact system have failed to pay taxes.

Marinescu congratulated Parvin for her presentation about the effect that the expansion of middle-class growth can produce. Marinescu emphasized that various studies have shown that globalization has generated a massive change in the distribution of incomes between capital owners and labor suppliers. Because strategic CSR and inclusiveness mean businesses are going down on the income pyramid and mean the base of the pyramid—those 4 billion people who consume less and produce less because they do not have means—must be included, it will be interesting to see the effect that including those lower-income individuals will have versus having the state provide them with social safety nets and other social protection.

Session 5: The Role of Civil Society in Advancing CSR in the Middle East

Badre Abdeslam, Professor, American Language Center, Rabat, Morocco; Program Director and Professor, ECSA Global, Berlin, Germany

Before exploring the role of NGOs in enforcing CSR in the Middle East, Badre Abdeslam presented the development path of CSR in Western countries. Corporations initially believed that their only obligation was to generate profits, Abdeslam said. This understanding started to change in the 1970s, when a series of corporate scandals, including Lockheed and Ford Pinto, led the United States to mandate the United Nations Economic and Social Council and other international organizations to attempt to regulate multinational corporations, thereby creating the first step for a framework for corporate social responsibility.

A wave of change came in the 1980s in response to highly publicized environmental disasters involving large corporations, such as Exxon Valdez, which started to be pressured by NGOs to act to protect the environment. In the following decade, labor rights, human rights, environmental quality, and sustainable development became part of the CSR agenda, thus broadening the role and the perception of the field.

Conceding that companies in the Middle East do not yet have a culture of practicing CSR in a sustainable way, Abdeslam said that, in spirit, CSR has been practiced in the region for more than 1,400 years. Responding to the criticism that Sharia does not have regulations regarding CSR, Abdeslam emphasized that neither Sharia nor Islam have rules but values that can be used as regulatory frameworks that guide the lives of individuals and communities. In other words, they are related to human interactions, and CSR can be seen as part of this context.

Nonetheless, the initiatives developed by Middle Eastern corporations are different from those adopted by Western companies and are based on the nature and specifics of Islamic civilization and Islamic social groups. Now is the time to restructure them according to the demands of modern society, argued Abdeslam, thereby bringing the Middle Eastern practices closer to the model of CSR adopted by the West. Conversely, the West should look at the Islamic heritage of CSR and cooperate with Arab countries to come up with a model adequate to the region. After all, stressed Abdeslam, CSR must be a concept and a practice flexible enough to fit the cultural specificities of each society.

To highlight the important role of civil society in the Middle East, Abdeslam described how NGOs developed in the region, tracing their origin to the colonial period. That time saw people organizing themselves to resist the colonial power and to fight for sovereignty. The same movements, after independence, shifted their focus from nationalism to political construction. People worked to reconstruct their countries by developing constitutions and building political institutions. Among those institutions were political parties, and within them were formed women's associations, trade unions, and other organizations. The next step was to focus on social issues. This moment generated a sharp increase in the number of NGOs, which also became more effective. Later, with the globalization phenomenon, came the emergence of NGOs specialized in business and CSR.

History explains some of the difficulties faced by NGOs in the Middle East. Because many of the movements started as anticolonial forces and had a strong political performance before turning to the business world, Arab regimes view them as opposition actors. Hence, they are considered a threat and have been oppressed from the beginning. Those that were allowed to survive are extremely close to the official powers and do not question them. NGOs that were permitted

to start their work right after independence also have a strong identification with the government. The NGOs created in the 1960s, 1970s, and 1980s usually were financed by the government and have little ability to oppose it.

This situation started to change only in the 1990s, when transnational organizations arrived in the region. They were important examples to local citizens and organizations, which became more aware of their rights and learned how to demand them. To stress his point, Abdeslam reminded the audience that now, for the first time, Morocco has established the Ministry of Governance and Civil Society, which is currently trying to draft a unifying document that will organize its job. However, the ministry still faces resistance from traditional local organizations, which think that independent NGOs that call for democracy and other modern values are a kind of Western organization that should not be part of the Moroccan political life.

To understand why NGOs have become more interested in businesses rather than in social affairs, one must remember that political and economic power has shifted from governments to corporations. In the West, this change is the result of economic liberalization. Frequently, corporations—especially multinational corporations—have more economic power than do governments, and they control access to most of the countries' valuable natural resources. They can also control the impoverished population by force, argued Abdeslam, mentioning Africa, the Middle East, and Central and South America as examples. According to Abdeslam, managers of NGOs believe that multinational corporations are dominant institutions in contemporary society and continue to increase their power and influence over its economic, political, and cultural life, while remaining largely unaccountable to the global civil society. Another factor presented by Abdeslam is the perceived shift of power from nation-states to international financial institutions, such as the World Bank and the International Monetary Fund, which are becoming essential actors in the decision-making processes related to national economic policies.

Abdeslam also highlighted the lack of accountability of multinational corporations regarding social and environmental issues. According to him, this lack led to a growing anti-corporate globalization movement and to the creation of specialized NGOs. Conversely, NGO executives wish to enlist businesses and to involve corporations in their agenda. Abdeslam believes that this desire is a consequence of a recent understanding of the large, international human rights organizations that they have been too focused on traditional categories of civil and political rights, thereby neglecting economic, social, and cultural rights. All those factors help to explain the recent shift of NGOs from social to business affairs. After all, stressed Abdeslam, the stability of nations is directed linked to and dependent on its economy.

Abdeslam divides NGOs into two main groups: those that try to engage corporations through CSR movements, and those that advocate the creation and enforcement of legal standards. The first group works to engage and persuade companies to adopt voluntary codes of conduct and to implement practices that protect labor rights, human rights, and the environment. They adopt a soft strategy and care about the financial side of the corporation, thus believing that the entire society can benefit when a company generates value. The second group prefers a more confrontational approach, arguing that corporations are too powerful and are routinely implicated in abuses of important social and economic rights. Thus, corporations should be subjected to international legal standards and held accountable to the global society.

The most common tactics used by NGOs when dealing with companies are (a) dialogue aimed at promoting the adoption of voluntary codes of conduct (the pure CSR approach), (b) advocacy of social accounting and independent verification schemes, (c) filing of shareholder resolutions, (d) documentation of abuses and moral shaming, (e) calls for boycotts of company products or divestment of stock, (f) advocacy of selective purchasing laws, (g) advocacy of government-imposed standards, and (h) litigation seeking punitive damages. Since no NGO is either exclusively engaging or purely confrontational, said Abdeslam, both groups use most—if not all—of those tactics at some point. Despite their philosophical differences, NGOs try to tailor their tactics on the basis of the company's position on CSR issues.

Abdeslam highlighted that unless NGOs are able to mobilize consumers and governments, they are unlikely to be successful in the long run. They may achieve some goals short term, but those changes will not be sustainable. As long as the majority of consumers remain either ill informed or indifferent to labor and human rights conditions under which corporations produce the goods they deliver to the marketplace, no amount of NGO pressure will produce sustainable changes. The good news is that studies have shown that consumers are motivated to avoid purchasing products that they know are being made under abusive labor conditions.

Governments could and should be doing more, argued Abdeslam not only in setting standards and establishing negative regulations but also in providing tax and other regulatory incentives that reward corporations for good behavior. The NGO-led social responsibility movement in the Middle East must now move the CSR agenda from voluntary compliance, to soft-law approaches, and finally to rigorous national and international enforcement regimes. Nevertheless, the NGO-led movement is unlikely to be successful unless it can mobilize support for greater corporate social accountability from informed consumers, concerned government officials, and progressive companies, concluded Abdeslam.

Rania Fazah, Middle East Researcher and Representative, Business and Human Rights Resource Centre, United Kingdom

Rania Fazah's presentation focused on business's commitment to human rights and the work of the Business and Human Rights Resource Centre, where she is a Middle East researcher. The U.K. organization has researchers in different parts of the world, including two in the Middle East, and its goal is to monitor business and human rights issues covering the entire spectrum of corporations, from small to large, from national to international, and in all sectors.

The organization is an information hub and emphasizes human rights, said Fazah, because those rights are internationally accepted and recognized standards that should be enjoyed by everyone. Human rights are obligations rooted in the law. Thus, respecting and protecting them is not a matter of choice, as Irene Khan, the former secretary general of Amnesty International, once declared. Among the principles of CSR, human rights must be incorporated in the mainstream strategy of every company. The human rights approach is different from the CSR approach, which can be decided by each company. The human rights approach is based on the individual, not on the organization, Fazah explained, and requires the company to permanently evaluate how it is affecting people's lives. In other words, the company must take seriously the principle of "Do no harm."

Mentioning the work of John Ruggie, former UN special representative on business and human rights, Fazah maintained that human rights are directly connected to businesses. Companies affect a large number of human rights, be they labor or nonlabor rights. This approach entails a huge responsibility, and businesses should be aware of it, she stressed. Companies have the responsibility, for example, to guarantee for women a safe workplace that is free from sexual harassment. Businesses also have a stake because they might lose talented female workers if they do not ensure women's safety. Extractive industries, such as oil drilling companies, are an example of companies that take no consideration of the livelihood of people in the regions they explore, according to Fazah. Events such as the BP oil spill in the Gulf of Mexico should put businesses under scrutiny, she said.

The Business and Human Rights Resource Centre has compiled a list of major human rights abuses committed by businesses in the Middle East. The center's website offers a legal accountability portal that compiles legal cases against companies that have violated human rights all over the world. Among the abuses are (a) discrimination against women, which is present in all Arab countries and mandated by law in Saudi Arabia; (b) practical barriers to freedom of organization; (c) unequal pay for men and women; (d) discrimination against workers with disabilities; (e) discrimination against groups with different sexual orientation; (f) harassment among co-workers; (g) restrictions on freedom of speech (for example,

workers can be fired if they post opinions online against a political party supported by the company); (h) arms sales to repressive regimes (Syria and Saudi Arabia, for example); (i) use of surveillance software and attacks on privacy (mainly in Egypt, Iran, Saudi Arabia, Syria, the United Arab Emirates, and Yemen); and (j) poor working conditions for migrant workers. Fazah also highlighted abuses by private security companies, which are not regulated by any specific law even though their employees carry guns, as well as by information technology and telecom corporations, which are frequently accomplices in surveillance and censorship acts.

In addition to publicizing the abuses, the center's goal is to engage companies and to increase human rights awareness among them. To do so, the center makes sure that all companies denounced on the website are informed about the allegations that led to their mention, and it offers them the opportunity to present their side of the story. The researcher describes this approach as "naming-praising-shaming." According to Fazah, the website has covered 1,500 companies so far, and about 70 percent of them have chosen to answer the allegations presented by the Resource Centre or by third parties (NGOs, civil society, or media outlets). When the company responds to an NGO-generated allegation, the Resource Centre puts both sides in contact, and often they continue the dialogue and work together to solve the problem.

As an example, Fazah mentioned a Human Rights Watch report on abuses against migrant workers in Bahrain. The Resource Centre approached one of the construction companies, Al Hamad, cited in the report and obtained a large number of documents about the housing conditions of its workers, which was the focus of the complaints. Both the report and the response were posted on the organization's website. Other examples involve Middle East Airlines, which was accused of endangering passengers' security; a Century Miracle Apparel factory, which is in Jordan and whose Burmese workers want to sue; and a private Lebanese television station that showed a prejudicial program about gays. All those companies engaged in conversations with the Resource Centre and sent responses that were published online. Other businesses, however, have refused to respond. Among them are the oil company Aramco, which was accused of firing workers who participated in antigovernment protests, and Spinneys International, a supermarket retailer that prohibited its workers from unionizing and fired those that tried to do so. According to Fazah, when the accusation against Spinneys became public, part of the population avoided the company's supermarkets.

Fazah stressed that the Resource Centre also sheds light on positive aspects of business and human rights. Among the good examples in the Middle East are the Global Network Initiative, which brings together businesses that emphasize human rights, and the SafeMed Project, although this latter initiative is not yet very strong in the region. Another example is the Global Initiative in Cairo, which is

headed by two important businesses: the Arab African International Bank and the Mansour Group. Those companies are now working on their respective codes of conducts to reinforce their human rights policies.

The Business and Human Rights Resource Centre also offers guidance for businesses while using support frameworks such as the UN Guiding Principles on Business and Human Rights; the Tripartite Declaration; the various ILO instruments; the OECD's Guidelines for Multinational Enterprises; the UN Global Compact; the ISO 26000 standard; the multistakeholder initiatives for particular sectors; and the company-level, human rights, and CSR policies. To help Middle Eastern companies become involved in this work, the Resource Centre has published guidelines in Arabic on its website, which also presents inspiring examples of companies that have serious and relevant CSR initiatives. Among them are initiatives from companies such as Adidas and Microsoft, both published in several languages, including Arabic.

In Fazah's view, the guidelines are largely unknown among businesses, civil societies, labor unions, and even many governments. Thus, academicians and NGOs can make an important contribution to the process of bringing human rights closer to companies by publicizing principles and pushing for their implementation. According to Fazah, this work also is paramount to increase awareness about how CSR connects to human rights and businesses.

Fazah concluded her talk by presenting some suggestions to strengthen human rights standards in the Middle Eastern business world. She advocated for (a) mainstreaming principles into existing initiatives; (b) urging states to incorporate guiding principles into legislations; (c) developing corporate human rights principles and standards, which follow the examples of the Mansour Group and the Arab African Bank in Egypt; (e) developing more binding instruments; and (f) promoting accountability of private security and military companies.

Another way of turning those principles into reality, stressed Fazah, is to practice strategic litigation as a way of building jurisprudence and bringing the subject to the legislative agenda. This kind of advocacy work has been done in different parts of the world, and the Business and Human Rights Resource Centre is part of a broader movement. According to Ms. Fazah, it is time to push for a human rights-based code of conduct in the Middle East, as well as to turn guiding principles into domestic laws.

**Stephen Hudspeth, Clinical Visiting Lecturer in Law,
Yale Law School, New Haven, Connecticut, USA**

Laws have positive and negative effects, began Stephen Hudspeth. On the negative side, a company's actions will be channeled in a very specific and precise

way when the company knows that there is a law violation and understands what the consequences are, especially when punitive damages are involved. On the positive side, the company may think that certain initiatives will enhance or hurt its brand's image. In other words, if it believes that failing to move in a certain direction will seriously damage its reputation, the business will address the issue differently.

According to Hudspeth, 35 years of legal practice has shown him that this mix of shame on the negative side and encouragement on the positive side is highly effective. He told the audience that he has given presentations on ethics for a large number of nonprofit (through the Commonfund Institute) and for-profit organizations in the United States. At the heart of all presentations is the notion that the most important asset an organization can have—whether it is nonprofit or for-profit—is its reputation. This concept has ramifications throughout CSR because reputation is as much a factor of complying with the law as it is of going beyond the law. Corporations approach CSR in a very strategic way because they have specific goals and want to ensure that those goals will be achieved, Hudspeth said. Not only compliance with the law but also the goal of preserving one's brand and desiring to go beyond the minimal legal requirements are extremely powerful motivators. The organizations involved in this conference have the power to press those buttons, he said. Moreover, law firms can be powerful allies to help access corporate decision makers, sometimes through pro bono work; CSR advocates need only make a persuasive case to have their support.

In Hudspeth's view, law clinics are an extension of pro bono work. The Yale Law School has 600 students and two dozen clinics that address issues such as human rights, domestic violence, and child labor, as well as community economic development. The latter is the subject emphasized in Hudspeth's clinic. Its focus is to empower people and nonprofit organizations within the society to achieve community goals and enhance the well-being of individuals, particularly those in distressed communities. In the United States, the main concern is the contraction of the middle class, and so it can address this concern, the clinic acts at the micro and the macro levels.

As an example of the clinic's work at the macro level, Hudspeth mentioned the decrease in value of homes during the Great Recession, beginning in 2007. In many distressed communities, homes are people's main—if not only—asset. With the recent crisis, 90 percent of wealth was wiped out in many of those communities. Not only did students in the clinic dedicate themselves to helping people in the neighborhoods around Yale University, but also they prepared a white paper and presented it to the U.S. Congress. The document offered advice on how to deal with the foreclosure crisis and the consequences of such a large wealth loss. In

fact, some of their recommendations were adopted by the federal government, Hudspeth announced.

Another example presented by Hudspeth, this time more locally oriented, was the establishment of a community bank. Regulators became even more careful after the financial crisis, he said, and the pressure and demand to establish a community bank were great. Although the project was a challenge, the clinic helped the group founding the institution to meet all legal requirements. Citing housing and education as some of the other sectors that benefit from the clinic's work, Hudspeth enumerated three main constraints faced by communities: (a) lack of financial resources, (b) lack of legal assistance, and (c) lack of business planning and directing. Those varied examples indicate why the clinic counts not only with law students but also with business, architecture, environmental science, and public health students. However, companies are not the only ones to benefit from the clinic's work. Hudspeth told the audience that the organization also deals directly with individuals in distressed economic communities. Because finding employment is especially difficult during economic crises, the clinic helps people to develop entrepreneurial skills through legal advice, business-planning knowledge, and consultation advice.

Students are required to work in the clinic for one semester, but many stay longer, explained Hudspeth. They frequently become student directors and help to lead the home program and direct other students working on the subspecialties of banking, housing, education, and encouragement of local entrepreneurship. Students are empowered and encouraged to take a leading role in making things happen, although nothing goes out without the faculty's supervision and revision.

According to Hudspeth, most of what the clinic does is help entities access various funding sources, such as foundations and other private sources, or government housing and urban development initiatives. Those programs can be very complicated, often involve tax credits, and present enormous legal challenges. Students in the clinic provide high-quality work and empower nonprofits that otherwise would not have adequate skills to access funding, Hudspeth explained. This work is very powerful for the students and the community, he said, and it has allowed the clinic to achieve its ultimate goals of providing an excellent teaching experience and, at the same time, of improving the communities surrounding the university.

Mentioning the advances made in women's rights in the past 35 years as an example, Hudspeth pointed out the positive effects of the law. He conceded that problems still have to be addressed but argued that much has changed in this area in the past decades. In his opinion, this improvement came about because laws were put on the books and enforced. The enforcement involved punitive damages, bringing both a shame factor in not adhering to the laws and an incentive for good

corporate citizenship, as well as for brand identification and other positive aspects mentioned earlier by Jeffrey Avina. Together, Hudspeth believes, those incentives lead corporations to do the right thing.

Sa'eda al-Kilani, Middle East and North Africa Researcher and Representative, Business and Human Rights Resource Centre, United Kingdom

To show the challenges faced by those who dedicate themselves to human rights and press freedom in the Middle East, Sa'eda al-Kilani started her presentation by reporting on a recent case involving Orange Company. For two months, employees of the telecommunication company had been protesting in Jordan against low wages, lack of benefits, and other problems. Eventually, the workers looked to the Business and Human Rights Resource Centre for help because they were informed that they could not seek a response from the company unless a news story or an NGO press release relaying the problems had been published. However, no newspaper would publish a story about the company's violations or its workers' protests.

Now a Middle East and North Africa researcher for the Resource Centre, al-Kilani worked for the *Jordan Times* about 15 years ago and said that Orange and Zain (called Fastlink at the time) had a US\$2 million annual advertising budget with the newspaper. This relationship was enough to deter the *Jordan Times* from publishing any article that portrayed the companies in a negative light. So far, the situation has not changed, stressed al-Kilani, and Middle Eastern newspapers will not publish negative articles about companies that have large advertising budgets with them.

To al-Kilani, it is extremely problematic when media outlets shy away from reporting not only on large companies but also on businesses in general, which is the current situation in the Arab countries. The media simply do not write about business violations of human rights. This lack is part of a code that dictates that businesses do not report negative things about other businesses. In this aspect, state-owned media are not much different from privately owned media. The state-owned media have close ties with businesses, especially because many of them are owned by former officials. Thus, they do not write about the problems involving those companies. Furthermore, journalists frequently choose not to expose problems because they want favors from those businesses. And if a story with negative information ever gets published, it is always short, without the name of the company, and mostly unintelligible, explained al-Kilani.

In her analysis, al-Kilani made a point of distinguishing between Arabic media and foreign media. Arabic-language newspapers mostly do not report on businesses, she said. Moreover, if they do, newspapers such as the *Jordan Times*, *Yemen Post*,

Tunisia Live, and *Arabian Business* do not reveal the names of companies in the articles. All the news articles denouncing human rights problems in the Middle Eastern business sector are in either English or French.

As an example, al-Kilani mentioned a recent story that was related to the torture and maltreatment of employees in Jordanian disability centers and that was reported by the BBC. Now the king and the government are dealing with the problem, she said, but the first reaction was to criticize the media outlet that broke the news. Because the story was raised by the BBC and nobody could stop its broadcast, disability or private centers started to tackle human rights violations on their premises, mostly to prevent the BBC from continuing to report on them. A similar situation took place when the *Financial Times* reported that Dubai was turning a blind eye to the fact that the country was becoming a leading destination for conflict diamonds from Zimbabwe.

Two other stories that recently became public, said al-Kilani, were related to migrant workers and child labor. In her view, both situations are now part of the region's agenda because they have attracted the attention of the international community and of the ILO. Nonetheless, other important cases mentioned earlier by Rania Fazah—such as discrimination against women in the workplace, responsible investment, and CSR—are not on the news.

Next, al-Kilani highlighted that problems involving human rights and businesses represent a fragility of the NGO sector. Her assessment is that NGOs in the region are not prepared to deal with this issue. Even to receive help from other organizations, Middle Eastern NGOs would need to make reports and present their grievances. However, they mostly do not know how to develop this work. Thus, she said, more should be done to raise awareness among NGOs and journalists.

Regarding CSR, al-Kilani concluded that although some stories can be found in the media, coverage is extremely limited. The articles generally are negative and point out the low interest of wealthy entrepreneurs. According to al-Kilani, 200,000 rich individuals in the Middle East and North Africa control US\$2 trillion, but they do not contribute to development, freedom, charity, or any similar causes. Of that amount, US\$350 billion belongs to women, mostly in Saudi Arabia and other Gulf countries, but they also do not use their wealth to support development. Moreover, about US\$1 trillion of Arab money is kept outside the region because local investors prefer to take their money to transparent, developed countries. One story is emblematic of this situation and was reported as an example of the Arab extravaganza: when oil prices rose in 2007 and 2008, Arab investors dedicated more than £200 million to a British soccer team, while teams in the Arab region had no resources whatsoever.

In 2010, Saudi businessman Abdullah bin Marei bin Mahfouz urged other wealthy individuals to follow Bill Gates's and Warren Buffett's examples and to contribute part of their fortunes (maybe one-half or one-third) to philanthropy. Then al-Kilani told the audience that Mahfouz took the initiative and donated one-third of his wealth to the Kinda Charity Organization, but it was a lone initiative—since then, no one has followed suit. Despite the apparent lack of philanthropy, al-Kilani maintains that Middle Easterners and North Africans are indeed generous. However, their contributions are given on a personal level. In other words, a strategic CSR or organized approach to charity is not present.

In conclusion, al-Kilani reiterated previous debates in the conference and stressed the importance of creating tax deductions for contributions made to civil society. In her opinion, tax deductions are what prompt many people in the West to contribute to charity, which also explains why NGOs are prosperous in developed countries but not in the Middle East. Similarly, if the goal is to achieve substantial changes, business law also must advance to stimulate the development of CSR. Moreover, journalists should be involved in discussions such as the ones being developed in this conference and should be invited to meet NGO representatives as a way of raising awareness to important issues connected to business and human rights. Arab governments have lost their glow in the post-Arab Spring era, argued al-Kilani, and it is time for businesses to take their place.

Session 6: An Action Plan for the Promotion of CSR in the Middle East

Frank Emmert, Director, Center for International and Comparative Law; Project Director, Egypt Program, Indiana University Robert H. McKinney School of Law, USA

Frank Emmert began his presentation by describing his academic and professional experience. In past years, one of his main activities was to support the preparations of Central and Eastern European countries to become part of the European Union. According to Emmert, his goal now is to use this experience—namely, the transition of countries with undemocratic governments and no real market economies into democracies that are based on the rule of law and market economies—to promote political and economic advances in the Middle East. To Emmert, the parallels between both cases are clear. However, he conceded, important distinctions also exist, and one of them is related to the Middle East's Islamic background.

To introduce the topic of CSR, Emmert mentioned the example of the illegal destruction of protected forests in Indonesia and Malaysia by palm oil producers,

a situation uncovered by the nongovernmental environmental organization Greenpeace. When the story became known in the West, companies such as Nestle, Cargill, and Unilever canceled their contracts with local producers because they did not want to be associated with such practices.

Although a universally accepted definition of CSR has yet to be generated, argued Emmert, some elements have been agreed upon. First of all, CSR is a voluntary initiative. This is why, in his opinion, the idea of regulating CSR through new legislation is not the best option. This is also related to the second point highlighted by Emmert: CSR standards cannot be limited to following the law. CSR practices must go above and beyond what companies are lawfully obliged to do. Finally, enterprises should not only avoid doing harm but also actively promote community development and other actions that are not linked to their corporate strategy. Those three approaches, Emmert said, are the distinct levels found within ideal CSR operations.

Some of a company's incentives to practice CSR, in Emmert's view, are connected to classic public relations. Among the concerns addressed by public relations are preventing bad publicity and generating good publicity, as well as avoiding having the company linked to negative practices such as corruption, human rights violations, and child labor. More than simply generating bad publicity, those practices can result in loss of business relations and contracts and, in some jurisdictions, the obligation to pay fines. This kind of risk management, stressed Emmert, can be done through proactive corporate culture. If the company also does good voluntary work, mandatory actions are unnecessary.

In Emmert's view, the demands for CSR laws are connected to people's frustration when companies do not voluntarily invest in social initiatives. If corporations understood such frustration and undertook CSR, new legislation would not be needed, and the companies would gain by enjoying more flexibility. When enterprises attach importance to such factors, they reap several benefits, emphasized Emmert. He reminded the audience of negative cases discussed in previous sessions—about employees who leave a company because they are not respected or because they discern that the business has a bad reputation. Conversely, if the company complies with good standards, contracts become easier to gain and maintain, and the organization is less likely to face a consumer boycott. Emmert, for instance, has been boycotting Walmart for almost 10 years because he opposes the company's policy of paying extremely low wages and not providing health care to its employees. He argues that his discomfort with this situation is exacerbated by the knowledge that every member of the family that owns Walmart is a billionaire. Emmert understands that his boycott does not affect the company, but he believes that if more people joined him in boycotting the store, they could make a difference.

States can have a similar attitude, said Emmert. In the United States, for example, a company that becomes associated with corruption cannot sign contracts with the government. Also, the once-accepted practice of bribing foreign officials to obtain business is now forbidden. Those are situations in which a regulatory approach is useful and advisable. However, Emmert went one step further and stressed that, even when there is no law to comply with, CSR can be good for business. He added that the time has come for specialists to clearly communicate this fact to corporations, particularly in the Middle East.

According to Emmert, any CSR initiative must take into consideration the company's economic responsibilities—in other words, the responsibility every company has to be profitable and distribute revenue to its shareholders. Companies also have legal obligations, which, unfortunately, multinational corporations often attempt to circumvent by picking and choosing which jurisdictions' laws they want to apply. The best example is the shipping industry, in which most companies are registered in countries such as Liberia and Panama because those countries have lower levels of regulation. The consequence is that, no matter the nationality of the ships' workers, they must work long hours with no benefits and they make next to no money. Therefore, the legal responsibility should be rephrased in a more specific way to ensure that companies comply with the laws of the countries in which they are conducting business, not the countries where they choose to be incorporated. Those initial levels, however, are not enough. It is essential that companies move up in the CSR pyramid to achieve its two final steps: ethical responsibility and philanthropy.

But the question is this: why should companies go above and beyond the law—and reduce their profits—to invest in CSR? Emmert argues that businesses must be reminded that they depend on a secure environment to flourish. They do so in countries that guarantee the rule of law—that have predictable and enforceable laws and a reliable judicial system. In countries where the government does not provide such benefits, investments are much lower; when they take place, the investments are made in what Emmert called a hit-and-run model. In this model, companies come in quickly, generate a large profit in the short term, and leave as soon as they can—before the next coup d'état or political crisis brings in a new dictator that can nationalize, expropriate, or harass multinational companies in some other way. Corporations and shareholders should keep this model in mind, concluded Emmert, and remember that they owe more than taxes to the countries in which they operate.

Emmert challenged Milton Friedman's idea that the only obligation businesses have is to make money. Emmert believes that this is an outdated concept. Other factors such as labor relations, human rights, environmental protection, and community relations are essential, and they are all addressed by CSR. Those

obligations are organized into codes—some general, others industry specific. Emmert questioned, however, the need for so many codes, especially those that are specific to certain industries. Although he conceded that exactly the same commitments and obligations cannot be expected from every industry, Emmert fears that codes developed for specific sectors can be tailored to highlight the positive aspects of those companies and to hide aspects that the company executives do not want to expose or discuss. The lack of accountability, effective complaints, and review mechanisms thus remains a serious challenge to the advancement of CSR. This is why the work of organizations such as the Business and Human Rights Resource Centre—which monitors the performance of companies, their compliance with human rights, and the teaching of CSR developed in business schools and entrepreneurship clinics—are of paramount importance.

Emmert then spoke about the case of Enron. For a long time the company was considered a role model in the CSR movement, with large investments in philanthropy, until it was involved in a major corporate scandal in 2001. Emmert stressed that large corporate scandals often are triggered by people who are considered generous philanthropists. During the day they steal a lot of money, and in the evening they donate a small part of it—maybe to help them sleep at night, he said. Thus, if every sector and company is allowed to write its own code of conduct, businesses will have accomplished the alchemist's ultimate dream, namely, turning dirt into gold. They can present their companies in a very positive light and sweep whatever dirt might exist under the carpet. Then they simply put their CSR codes over the carpet so that nobody can stick around for too long and discover what the company executives do not want the world to see, said Emmert.

Moving on to the future of CSR, Emmert then argued that the most promising CSR frameworks today are, in his opinion, the UN Global Compact, which has been able to involve a large number of companies, and the ISO system, especially the ISO 26000: Guidance on Social Responsibility. This instrument, however, has one deficit: contrary to other ISO standards, it does not have a certification program. The initiative is similar to the OECD code and the Global Compact, to which a company may sign up voluntarily but that do not require a certification process. Emmert argued that those instruments should advance in this area because a certification system can be very effective. The large companies in the American auto industry, for example, require that every supplier be ISO certified. Otherwise, they will not be granted contracts. This requirement avoids problems such as the one faced by Nike when one of its suppliers was found to be using child labor in Bangladesh. By demanding ISO certification, the auto industry protects itself from this kind of reputation problem, which can lead to fallen sales and to the need to invest in advertisement and communication campaigns to change the public's perception of the company. This requirement also decreases the chances that

vehicles will have defective parts, thus forcing companies to conduct expensive recalls to replace them. Emmert envisions a future in which codes related to CSR will be certifiable and will be pursued by companies of all sizes because large businesses will demand it from their suppliers. Emmert believes that such a future is possible because this kind of attitude would prevent companies from being hurt by scandals connected to issues such as sexual harassment and environmental problems, which are unethical and maybe even be unlawful.

Nevertheless, for advancement in the CSR field, it is important, first of all, to collect and organize more data. Those data can be used, among other things, to create a code that takes under consideration Islamic values, which would be especially effective in the Middle East. It could also go beyond what the more international codes have done so far and could be connected to a certification process. Emmert stressed that developing such a code is feasible because CSR is an integral part of Sharia, even though the Islamic regulations are 1,400 years old. In his view, Sharia has several provisions that are connected to how businesses should be conducted, which involves respect of contractual obligations, environmental protection, and fair treatment of workers, among other concepts. The West needed more than 1,000 years to catch up to that, said Emmert.

In the Middle East, implementing those practices would not be difficult because they are religious values, and people take religion very seriously. The Islamic societies need only to be reminded that this is what is expected of them. Emmert concluded his remarks by emphasizing that nothing in Islamic law is incompatible with a modern social responsibility code. Nonetheless, a document based on Sharia and the Qu'ran would not be seen as imported from or imposed by the West, an argument that is sometimes used in Middle Eastern countries to disregard CSR practices.

Written Interview with Dina Habib Powell

President of the Goldman Sachs Foundation and Global Head of Corporate Engagement

On September 10, 2013, the Protection Project awarded to Dina Habib Powell, president of the Goldman Sachs Foundation and global head of Corporate Engagement, “The 2013 Protection Project Corporate Social Responsibility Excellent Award” in special recognition of her efforts to promote human rights in business. The award was received by Joyce Brayboy, vice president of Office of Government Affairs, Goldman Sachs, Washington, DC. Following the ceremony, Powell answered the following questions prepared and submitted by the staff and research associates of the Protection Project:

1. Could you please introduce yourself and give us a brief overview of the work of the Goldman Sachs Foundation?

Powell: I serve as president of the Goldman Sachs Foundation and as global head of Corporate Engagement. I joined Goldman Sachs as a managing director in 2007 and was named partner in 2010. Prior to joining Goldman Sachs, I served as assistant secretary of state for Educational and Cultural Affairs and as deputy under-secretary of state for Public Diplomacy and Public Affairs. Prior to being confirmed as assistant secretary, I served as assistant to the president for Presidential Personnel in the White House.

Goldman Sachs and its people are committed to helping communities where we work and live, and the firm supports communities worldwide through initiatives aimed at addressing critical social and economic issues. Since 2008, Goldman Sachs has committed \$1.6 billion to philanthropic initiatives. Goldman Sachs’s philanthropic efforts include the following four major initiatives, which advance the firm’s objective of driving economic growth and making a difference: 10,000 Women, 10,000 Small Businesses, Goldman Sachs Gives, and Community TeamWorks.

2. How does Goldman Sachs incorporate corporate social responsibility (CSR) in the policy of the company? Does the company report on CSR in its annual report?

Powell: Corporate engagement programs can help the firm attract and retain diverse talent, and we have seen that the chance to participate in

corporate engagement programs makes employees proud to work at the firm. We have a waiting list of employees who want to take part in the programs.

Goldman Sachs reports on corporate engagement in its annual report, but the firm also has a yearly *Environmental, Social, and Governance Report* that demonstrates our commitment to being a good steward in helping to address social, economic, and environmental challenges. We believe that effective stewardship extends beyond the traditional confines of generating returns for shareholders. Our business depends on growth and stability. We have an equal stake in overcoming obstacles to progress and opportunity. Our people are committed to using their skills wherever they can to make a positive difference.

3. Would you like to share with us some details of the CSR initiatives undertaken by the company, including the initiatives titled 10,000 Women, 10,000 Small Businesses, and Goldman Sachs Gives?

Powell: The 10,000 Women program is a five-year, \$100 million global initiative to help grow local economies by providing 10,000 underserved female entrepreneurs with a business management education, an access to mentors and networks, and a set of links to capital. The program is coordinated by nearly 90 academic and nonprofit partners across 43 countries, and we will reach the 10,000th woman by the end of this year.

The 10,000 Small Businesses initiative is a \$500 million investment to help small businesses create jobs and drive economic growth by providing entrepreneurs with a practical business education, improved access to capital, and business support services. The program is operating in 16 sites, including Chicago, Cleveland, Houston, Long Beach, Los Angeles, Miami, New Orleans, New York, Philadelphia, and Salt Lake City, as well as six capital-only states: Kentucky, Montana, Oregon, Tennessee, Virginia, and Washington.

Goldman Sachs Gives is a donor-advised fund, from which current and former Goldman Sachs partners can recommend grants to qualified nonprofit organizations. In the past three years, more than 13,000 grants totaling \$669 million have supported organizations located in 35 countries. The fund focuses on four strategic pillars: (a) increasing educational opportunities, (b) building and stabilizing communities, (c) honoring service and veterans, and (d) increasing economic growth.

Community TeamWorks is a global volunteer initiative that allows our people to take a day out of the office to volunteer with local nonprofit organizations. In 2013, 25,000 Goldman Sachs volunteers from 50 offices

worldwide partnered with almost 900 nonprofit organizations in a diverse array of community service projects.

4. How can you make the case that those initiatives have an influence on society as a whole?

Powell: The data for 10,000 Women show improvements in women's businesses immediately and 30 months after graduation from the program. In fact, 30 months after graduation, 83 percent of scholars increased revenues over the previous year, 74 percent added new jobs, and 90 percent of women mentor others in their families and communities.

The International Center for Research on Women, the preeminent research organization focused on women and girls, recently concluded the first-ever independent assessment of the effects of the 10,000 Women program in India. Findings included the following:

- The 10,000 Women initiative is filling a gap by providing business services to small and medium-sized women's enterprises.
- There is a proven multiplier effect on families, communities, and other women.
- Graduates of 10,000 Women attributed positive changes in business practices and increased confidence to their participation in the 10,000 Women initiative, which meaningfully contributed to business growth.

Moreover, 1,600 owners of small businesses have participated in 10,000 Small Businesses thus far, and the program maintains a 99 percent graduate rate. Six months after graduating, approximately 63 percent of participants have reported increasing their revenues, approximately 47 percent have reported creating new jobs, and 76 percent of graduates have worked or are working together.

5. Do you have formal mechanisms in place to evaluate the effect of your CSR initiatives, and, if so, could you tell us about those mechanisms?

Powell: When Goldman Sachs launched 10,000 Women in March 2008, our chairman and chief executive officer, Lloyd Blankfein, made it clear that this philanthropic initiative would stay true to one of the firm's deepest values: "Measuring everything we do."

Our firm is all about numbers, and we approach 10,000 Women and 10,000 Small Businesses with the same framework as we do the rest of our work. We made a strong commitment to measuring the effect at the launch of

each program and have since worked with our information technology team and the Bridgespan Group to build a world-class, comprehensive, online monitoring and evaluation (M&E) system. For 10,000 Women, we also hired dedicated, on-the-ground, M&E staff members for our programs. Doing so has allowed our staff members and partners to see results in real time, analyze data at the click of a button, and develop customized reports for graduates. For 10,000 Small Businesses, our M&E efforts are a collaboration between our team at Goldman Sachs and staff members; at the community colleges we partner with; and at Babson College, our lead national academic partner.

6. What are some of the obstacles and challenges faced in developing and executing the initiatives? How has the Goldman Sachs Foundation attempted to address some of the issues?

Powell: The two biggest challenges for 10,000 Women are reach and demand. With respect to the first challenge, in implementing 10,000 Women, we needed to enter markets where neither the firm nor the foundation had operated before, including postconflict countries such as Afghanistan and Liberia that present their own unique set of operating challenges. We approached those markets understanding that there was much we had to learn, and the key to our success in such circumstances has been strong, local partnerships. For example, to train a pool of potential loan candidates, 10,000 Women is working closely with the Liberian Enterprise Development Finance Company, a local financing facility supported by the U.S. Overseas Private Investment Corporation, CHF International (now Global Communities), and Robert L. Johnson Companies. With respect to the second challenge, the demand for entrepreneurship training for women-owned small and medium-sized enterprises is far greater than we anticipated and has exceeded our capacity to supply the program. In some cases, we receive 30 to 40 applications for each available spot in a cohort. For this reason, we are exploring even more ambitious partnerships to help us scale the program to meet this demand.

7. As you are fully aware, women in the workplace do not always have the same status as men, especially in the private sector. How can we think together about measures to increase women's contribution to the workforce and participation in public life?

Powell: Women are proven drivers of gross domestic product. When they are able to access the tools they need—from skills training to education to market access and credit—they can make an enormous difference. We have seen time and time again how our 10,000 Women graduates invest

their success in those around them as they mentor other women and girls and extend the reach of the program far beyond its direct participants.

- 8. Here at the School of Advanced International Studies (SAIS), we run an International Human Rights Clinic, where students apply human rights norms and standards studied to practical scenarios. For instance, clinical students in the past have interviewed corporations about their CSR initiatives and conducted a fact-finding mission in the Philippines and Kuwait to examine the bilateral partnership between the two countries to protect the rights of migrant domestic workers. This academic year (2013/14), our students will conduct a fact-finding mission in Turkey to examine the production of goods through child labor and forced labor. Do you see a possible joint project between the clinic and the foundation, or, more generally, how do you view those types of academia–corporate joint initiatives?**

Powell: Our foundation's initiatives, 10,000 Women and 10,000 Small Businesses, have done extensive work with academia to ensure that our programs provide the best possible education to the scholars. Both programs are partnerships with academic institutions. Around the world, we have nearly 100 academic partners. A public–private 10,000 Women partnership between Goldman Sachs and the U.S. State Department that brings women entrepreneurs from around the world for an intensive two-week training is run by Thunderbird School of Global Management. In 10,000 Small Businesses, we partnered with Babson College to design the curriculum for the business education component of the program, which is then administered through community colleges, thereby building their business education capacity.

- 9. Our students at SAIS study international relations, international economics, finance, and development and are always looking for opportunities in the international business sector. Do you have any advice for them on how to develop a career in this field and achieve something meaningful as you did?**

Powell: Students should be open to opportunities as they come along, because those opportunities will provide the advantage of a diversity of experience. They can also seek a mentor who can provide honest opinions and constructive areas for development. A network of peers whom students can draw on for advice and support is also useful for career development.

Just Business: Multinational Corporations and Human Rights, by John Ruggie

Mohamed Mattar

Guiding Principles in Consensus Building

Just Business presents the framework and guiding principles that were developed by John Ruggie, UN Special Representative for Business and Human Rights, in an attempt to hold multinational corporations responsible for human rights abuses.¹ In 2005, the United Nations (UN) Commission on Human Rights created a mandate about business and human rights that called for five tasks:

- To identify and clarify standards of responsibility and accountability for transnational corporations (TNC) and other business enterprises with regard to human rights
- To elaborate on the role of states in effectively regulating and adjudicating the role of TNCs and other business enterprises with regard to human rights, including through international cooperation
- To research and clarify the implications for TNCs and other business enterprises of concepts such as “complicity” and “sphere of influence”
- To develop materials and methodologies for undertaking human rights impact assessments of the activities of TNCs and other business enterprises
- To compile a compendium of best practices of states and TNCs and other business enterprises.

In 2011, the UN Human Rights Council drafted a set of “Guiding Principles on Business and Human Rights” for the purpose of “enhancing standards and practices with regard to business and human rights so as to achieve tangible results for affected individuals and communities, and thereby also contributing to a socially sustainable globalization.”²

During the six-year period from the drafting of the original mandate to the development of the Guiding Principles, Special Representative Ruggie submitted

1 John Ruggie, *Just Business: Multinational Corporations and Human Rights* (New York: W. W. Norton).

2 UN Human Rights Council, “Guiding Principles on Business and Human Rights: Implementing the United Nations ‘Protect, Respect, and Remedy’ Framework,” United Nations, New York, 2011, 1.

four reports to the UN Council: (a) “Human Rights Impact Assessments: Resolving Key Methodological Questions”;³ (b) “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts”;⁴ (c) “Business and Human Rights: Towards Operationalizing the ‘Protect, Respect, and Remedy’ Framework”;⁵ and (d) “Business and Human Rights: Further Steps toward the Operationalization of the ‘Protect, Respect, and Remedy’ Framework.”⁶

John Ruggie describes the status of “multinational corporations and human rights” that existed when he first started. In his own words:

[W]hat I found when I surveyed the global business and human rights pictures at the outset of my mandate: a deeply divided arena of discourse and contestation lacking shared knowledge, clear standards and boundaries; fragmentary and often weak governance systems concerning business and human rights in states and companies alike; civil society raising awareness through campaigning against companies, and sometimes also collaborating with the most willing among them to improve their social performance; and occasional lawsuits against companies brought mainly through the innovative use of legal provisions that were originally intended for different purposes.⁷

In addition, although there have been numerous CSR initiatives, “They existed largely as disconnected fragments incorporating different commitments, with few focused specifically on human rights.”⁸

For the reader, the book provides guidelines on how to identify an issue in the area of human rights, galvanize stakeholders, create consensus, and achieve possible results. The author devotes a full chapter to what he calls “strategic paths.” First, he advises that it is advantageous to begin with identifying “baseline studies” that include corporate abuse of human rights and existing legal standards.

Second, he explains the concept of “process legitimacy,” using a narrative that highlights various engagements with nongovernmental organizations, including advocacy groups. Ruggie writes that although some advocacy groups expressed the necessity of amending existing international human rights law to incorporate

3 John Ruggie, “Human Rights Impact Assessments: Resolving Key Methodological Questions,” UN General Assembly Document A/HR/C/4/74, February 5, 2007.

4 John Ruggie, “Business and Human Rights: Mapping International Standards of Responsibility and Accountability for Corporate Acts,” UN General Assembly Document A/HR/C/4/035, February 9, 2007.

5 John Ruggie, “Business and Human Rights: Towards Operationalizing the ‘Protect, Respect, and Remedy’ Framework,” UN General Assembly Document A/HRC/11/13, April 22, 2009.

6 John Ruggie, “Business and Human Rights: Further Steps toward the Operationalization of the ‘Protect, Respect, and Remedy’ Framework,” UN General Assembly Document A/HRC/14/27, April 9, 2010.

7 Ruggie, *Just Business*, xxxv–xxxvi.

8 *Ibid.*, 34.

liability of businesses, the author felt the imperative lay with generating “a regulatory dynamic that would reduce the incidence of corporate-related human rights harm to the maximum extent possible in the minimum amount of time.”⁹ Transparency is also identified as an important factor in the “process legitimacy.”

Third, Ruggie calls for engaging new individuals, groups, and communities whose insights and influence might advance the agenda. This group includes “nontraditional stakeholders” such as the United Nations Commission on International Trade Law.

Fourth, he encourages testing the practical visibility of the Guiding Principles to assess the extent to which they are feasible once on the ground. In this context, several projects were designed to assess the due diligence conducted by companies and the grievance mechanisms available.

Fifth, Ruggie again emphasizes the necessity of partnerships in engendering change and calls for obtaining the endorsements of influential entities, including leading government officials and other main stakeholders. And finally, he calls for “working toward convergence among standard-setting bodies in order to achieve scale and benefit from the broadest possible portfolio of implementing mechanisms.”¹⁰

Just Business details a main challenge in aligning the protection and respect of human rights with multinational corporate practices. Corporations are subject to the local jurisdiction, and it is difficult to hold a parent corporation liable for acts committed in violation of human rights by a local subsidiary. Extraterritoriality is the exception, not the norm, and is proof that corporate human rights abuse is not always easy to produce. The latest Supreme Court decision in *Kiobel v. Royal Dutch Petroleum Co.*, decided on April 17, 2013, supports this premise in the context of the Alien Tort Claim Act. The Court held that “[n]othing in the [Alien Tort Statute’s] text evinces a clear indication of extraterritorial reach.”¹¹ Not all domestic legislation provides for corporate criminal liability.¹²

John Ruggie makes a very powerful argument on the limitations of the UN-based human rights regime when he states that it is “neither designed nor is it capable of acting as a centralized legal regulatory system.” He adds that “states adopt and ratify treaties voluntarily; none can be forced to do so. Not all states have ratified all human rights treaties, and not all implement those they have

9 Ibid., 145.

10 Ibid., 129.

11 *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013).

12 See Mohamed Mattar, “Corporate Criminal Liability: Article 10 of the Convention against Transnational Organized Crime,” *Columbia Journal of International Affairs* 66, no. 1 (Fall–Winter 2012): 107–22.

ratified. Even where legal obligations do exist, the regime lacks adjudicative and enforcement powers.”¹³

Outlining the many shortcomings in the execution capacity of the UN, he explains that “human rights treaties can take a long time to negotiate and enter into force,”¹⁴ and they “lack an international enforcement mechanism.”¹⁵ In many cases, “There is a risk that a treaty would establish too low a ceiling.”¹⁶ Consequently, Ruggie did not favor building on the UN’s 2003 Declaration on Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights. In his own words, “I found the Norms to be deeply flawed,”¹⁷ and “the Norms suffered from exaggerated legal claims and conceptual ambiguities.”¹⁸

However, not everyone agrees with the route that the author has taken: “[A]lthough the Ruggie Framework is the most comprehensive set of transnational rules, norms, and implementation mechanisms in the CSR issue-area, it remains a solely voluntaristic system without the power to compel, and many states lack the technical capacity necessary to implement its mechanisms.”¹⁹

Amnesty International voiced the opinion that the framework falls short of “capturing essential functions required to advance the rights of those affected by business-related human rights abuses.”²⁰ Human Rights Watch echoed this sentiment, stating that “in effect, the council endorsed the status quo: a world where companies are encouraged, but not obliged, to respect human rights.”²¹ The following argument is being made:

[W]hile Ruggie’s work is transformational, it is still incomplete. The Guiding Principles are significant, but they are non-binding. Victims of human rights abuses who lack the means of redress in their domestic sphere are still largely unable to turn to international law in order to hold TNCs accountable for their role in the abuse. This can lead to significant human rights abuses

13 Ruggie, *Just Business*, xxx.

14 *Ibid.*, 57.

15 *Ibid.*, 62.

16 *Ibid.*, 64.

17 *Ibid.*, 53.

18 *Ibid.*, 54.

19 William Bradford, “Beyond Good and Evil: The Commensurability of Corporate Profits and Human Rights,” *Notre Dame Journal of Law, Ethics, and Public Policy* 26, no. 1 (2012): 141–280.

20 Amnesty International, “United Nations: A Call for Action to Better Protect the Rights of Those Affected by Business-Related Human Rights Abuses,” Public Statement, June 14, 2011.

21 Human Rights Watch, “UN Human Rights Council: Weak Stance on Business Standards,” news release, June 16, 2011.

left unchecked, particularly in weak governance zones, where the State itself either perpetrates the abuse or is unwilling to stop the aggressor.²²

It is encouraging that work done by John Ruggie is being expanded on by the Working Group as concerns the Issue of Human Rights and Transnational Corporations and Other Business Enterprises (established in November 2011) to highlight best practices, comparative models, and pioneering initiatives in implementing the Guiding Principles on Business and Human Rights.²³ However, there is still a lot of work to be done, as a member of the working group stated in the 23rd Session of the Human Rights Council:

Many states and business enterprises are still not aware, or have not yet begun to walk the road of implementation. And many who have begun are facing challenges on different aspects of the implementation of the Guiding Principles. Effective remedy is still elusive for a very large majority of persons and communities, who suffer adverse impacts in the context of business activities, and those that push for such remedy, still face very grave human rights violations.²⁴

Just Business is a success story that highlights the necessary role that businesses must play in protecting human rights. Not only is *Just Business* a robust outline of the guiding principles on the interplay of business and human rights, but also it serves as a blueprint about consensus building among multisector actors and the way in which a framework can champion international standards while satisfying the interests of all involved stakeholders.

22 Jena Martin Amerson, "The End of the Beginning? A Comprehensive Look at the UN's Business and Human Rights Agenda from a Bystander Perspective," *Fordham Journal of Corporate and Financial Law* 17, no. 4 (2012): 871–83.

23 See UN Human Rights Council, "Report of the Working Group on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises," UN General Assembly Document A/HRC/20/29, April 10, 2012.

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