1. It is, certainly, superfluous to recall the close link between the UN Convention on the Rights of the Child of 20 November 1989 (Hereafter “The CRC Convention”) and the Hague Conventions, especially the Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in respect of Parental Responsibility and Measures for the Protection of Children (Hereafter “The 1996 Hague Convention”)! Of course, the Hague Conventions and the CRC Convention have scopes and purposes which are still quite different. The Hague Conventions, including the 1996 Hague Convention, do not attempt to create a uniform international law of child protection; the basic elements of such a law are already to be found in the 1989 UN Convention on the Rights of the Child, which undoubtedly stands as the most comprehensive, holistic and inclusive text on the international protection of the rights of the child.

2. However, two comments should be added in this connection:

- Firstly, We should not forget that even if the function of the 1996 Hague Convention is principally to avoid legal and administrative conflicts and to build the structure for effective international co-operation in child protection matters between the different systems, it is much broader in scope than the other Hague Conventions, covering as it does a very wide range of civil measures of protection concerning children, including in providing a structure for the resolution of Parental disputes over custody and contact which may arise when parents are separated and living in different countries, the reinforcement of the 1980 Child Abduction Convention, by underlining the primary role played by the authorities of the child’s habitual residence in deciding upon any measures which may be needed to protect the child in the long
term. Much more! The Convention is of crucial interest for unaccompanied minors crossing borders and finding themselves in vulnerable situations in which they may be subject to exploitation and other risks.

Last and not least, the Convention provides for co-operation between States in relation to the growing number of cases in which children are being placed in alternative care across frontiers, for example under fostering or other long-term arrangements falling short of adoption. This includes arrangements made by way of the Islamic law institution of Kafala, which is a functional of adoption but falls outside the scope of the 1993 Intercountry Adoption Convention.

Therefore, the 1996 Hague Convention is itself presented as an integrated system which scope is broad, covering both public and private measures of protection or care;

- Secondly, the CRC Convention often refers, at least indirectly, to the Hague conventions. So it is for example of article 9 providing that “States Parties shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child….”. So it is, also and especially, of article 10 providing that “...A child whose parents reside in different States shall have the right to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contacts with both parents...” and article 11 providing that “1. States Parties shall take measures to combat the illicit transfer and non-return of children abroad.

2. To this end, States Parties shall promote the conclusion of bilateral or multilateral agreements or accession to existing agreements”.

3. A synthesis review of the concluding observations of the Committee on the Rights of the Child (Hereafter “The Committee”), adopted upon the consideration of the periodic reports submitted by some States of the MENA region, attests on the relevance of the Hague Conventions, including the 1996 Convention, in these countries, even if most of these countries governed- totally or partially- by Islamic legal systems have not ratified these conventions.

**Algeria**

4. In its concluding observations adopted upon the consideration in June 2012 of the combined third and fourth report of Algeria, submitted under article 44 of the CRC Convention, the Committee expresses concern, among others, that “... (a) Registration officers and family judges often refuse to register children born out of wedlock although no legal restriction exists concerning the registration of those children...”. The Committee, therefore, “... urges the State party to ensure that all children within the territory of the State party living in Algeria, including children born out of wedlock, refugee
and stateless children are registered at birth” ¹.

In another hand and while welcoming the amendment of the Nationality Code in 2005, giving Algerian women the right to transfer their nationality to their children born to a foreign father, “...the Committee expresses concern that in some cases however, Algerian mothers have to seek the agreement of a family judge in order to pass on their nationality to their children. The Committee also expresses concern that children born out of wedlock are often denied to take their mother’s family name and instead are registered with two surnames, a situation which leads to their identification as children born out of wedlock and to their subsequent stigmatization…”.

The Committee, therefore, “...urges the State party to:

(a) Ensure that children born to an Algerian mother married to a foreign national can automatically acquire their mother’s nationality as prescribed in the Nationality Code;

(b) Send clear instructions to family judges and civil registration officers that children born out of wedlock should be registered in accordance with the law under their mother’s name when their mother presents such a request; ...» ².

5. Regarding the issue of illicit transfer and non-return of children abroad, the Committee “...reiterates its concern about the difficulty in implementing judicial decisions regarding custody and visitation rights for Algerian children with one parent living outside Algeria and the prevalence of child abduction among children of mixed marriages”.

The Committee, therefore, “...reiterates its recommendations (CRC/C/15/Add.269 para. 49) that the State party undertake all necessary efforts to prevent and combat illicit transfer and non-return of children and to ensure proper and expeditious implementation of judicial decisions made with regard to custody and visiting rights. It further recommends that the State party strengthen dialogue and consultation with relevant countries, notably those with which the State party has signed an agreement, regarding custody or visitation rights. The Committee also urges the State party to ratify the Hague Convention on Civil Aspects of International Child Abduction of 1980”.

6. Finally concerning the right of the child deprived of family to alternative care protection, the Committee “...notes as positive the legal provisions regulating the Kafala which enable children in Kafala to acquire the family name of their legal guardian. The Committee is however concerned that the legal situation of children in Kafala remains precarious. In particular, the Committee notes with concern that:

(a) An internal circular of the Ministry of Interior reportedly requests the civil registration officials not to register the child in Kafala (Makfoul) on the family record book (livret de famille);

(b) In case of divorce, the child in Kafala automatically stays with the Kafil and has no right to live with his/her mother;

(c) When the legal guardian (Kafil) dies, the Makfoul (child placed in Kafala) is considered as part of the heritage, and therefore, the legal heirs can decide whether or not to keep

² Ibid., Paras. 39-40.
him or her in the family, a situation which places them at risk of being re-institutionalized.”

The Committee, therefore, “...urges the State party to amend its legislation regulating the Kafala system in order to bring it into full compliance with the Convention and in particular to repeal the Ministerial Circular preventing the Makfoul to be registered in the family record book. The State party should ensure that children in Kafala have the possibility to stay with their mothers in case of divorce. The Committee further urges the State party to take all necessary measures to prevent and punish cases of illegal adoption and placement in Kafala of children born out of wedlock”.

Morocco

7. In its concluding observations adopted upon the consideration, in September 2014, of the the combined third and fourth report of Morocco, submitted under article 44 of the CRC Convention, the Committee while welcoming the recognition of filiation through the mother in the 2004 reform of article 6 of the Family Code, expresses concern, among others, that “…rural women often remain unaware of their right to transmit Moroccan nationality to their children. The Committee is also concerned that:

(a) Unmarried mothers can transmit their names to their children only if the father gives his consent to this transmission;

(b) Fourteen per cent of children remain unregistered in the State party, and a significant number of children abandoned at birth remain unregistered as recognized by the State party itself;

(c) Migrant and asylum-seeking parents face difficulties in obtaining official birth registration certificates for their children, as they cannot afford the medical fees to be paid before obtaining an avis de naissance”.

The Committee, therefore, « ...urges the State party to:

(a) Adopt all the necessary measures for an effective implementation of the nationality law reform, and amend article 16, paragraph 7, of Law No. 37-99 in order for all mothers without discrimination to be able to transmit their family names to their children.

(b) Ensure that all children born on its territory, irrespective of their parents’ status or their legal residence permits, are registered and provided with official birth certificates immediately, without any undue barriers; ...».

8. With regard to the right to know and be cared for by parents, the Committee expresses concern that « ...although thousands of children are born outside of wedlock every year, the legislation of the State party does not allow mothers and children to take action to establish paternity on the basis of DNA testing ».

The Committee, therefore, « ...urges the State party to allow, by law, women and

3 Ibid., Paras. 52-54.

4 CRC/C/MAR/CO/3-4 , 14 October 2014, Paras. 30-31.
children to initiate action to establish paternity on the basis of DNA testing».

9. Finally concerning the right of the child deprived of a family environment to alternative care protection, the Committee while noting the adoption of Act No. 15-01 of June 2002 on abandoned children, expresses concern that "...the legal situation of children in Kafalah remains precarious. In particular, the Committee notes with concern that this law does not prescribe a psychological evaluation of applicants before Kafalah is granted, does not give priority to the extended family and does not entail any follow-up to the placement in Kafalah. The Committee is also concerned about information that, in some instances, the Kafalah system is used to exploit girls in domestic labour or to place children from poor families. The Committee is further concerned about circular 40S/2 of 2012, which contradicts the best interests of the child by prohibiting non-residents from adopting children".

The Committee, therefore, "recommends that the State party:

(a) Amend its legislation regulating the Kafalah system in order to bring it into full compliance with the Convention;

(b) Prevent the automatic placement of children born out of wedlock and children in poverty into Kafalah, by providing single mothers and/or parents with the necessary support to care for their children;

(c) Ensure proper follow-up of children placed in Kafalah;

(d) Take all the necessary measures to prevent and punish cases of exploitation of children via the Kafalah system; and

(e) Repeal circular 40S/2 of 2012".

Egypt

10. In its concluding observations adopted upon the consideration, in June 2011, of the consolidated third and fourth periodic report of Egypt, submitted under article 44 of the CRC Convention, the Committee notes as positive the development of minimum standards of alternative care and the availability, albeit weak, of the kafalah system as an alternative system to institutional care. However, the Committee expresses deep concern“...at the high number of children, including "abandoned children", living in institutions, in particular children (45,845) staying in social surveillance offices (256) throughout the State party due to dire economic situation of mothers, neglect and domestic violence and separation of parents...”.

The Committee, therefore, “...recommends that the State party continue and strengthen its system of alternative child care and in particular:

(a) Promote the placement of children in extended and foster families and other types of family-type placements, including by strengthening the kafalah system;

5 Ibid., Paras. 32-33.
6 Ibid., Paras. 50-51.
(b) Establish a system of regular inspection and effective monitoring of all alternative child care placements, including the kafalah system, and the availability of a complaints mechanism for children in institutional or alternative care;...”.

Lebanon

11. In its concluding observations adopted upon the consideration, in June 2006, of the the third report of Lebanon, submitted under article 44 of the CRC Convention, the Committee expresses its deep concern "...at the high number of children placed in institutions, and at the lack of the possibility of having the placement decision reviewed by a civil court...The Committee notes with concern that many professionals and volunteers working with children deprived of a family environment are not familiar with the existing laws and regulations protecting the child, including the attention that should be given to family reunification....».

The Committee, therefore, “...urges the State party:

(a) To take immediate preventive measures to avoid separation of children from their family environment by providing appropriate assistance and support services to parents and legal guardians in the performance of their child-rearing responsibilities, including through education, counselling and community-based programmes for parents, and to reduce the number of children living in institutions by fully implementing the laws relating to family-type alternative care of children and by addressing the root causes behind separation, including socio-economic problems, faced by parents;...”.

12. With regard more specifically to the functioning of adoption and Kafalah as alternative modes of protection, the Committee expresses concern “...at possible irregularities in the systems of adoption and kafalah. It notes with concern that the procedures for adoption in religious and civil courts are not in full conformity with article 21 of the Convention and that the principle of the best interests of the child is not always subject to the principal consideration during these procedures. It also notes with concern the prevalence of illegal adoptions both at national and intercountry level ».

The Committee, therefore, “...recommends that the State party review the laws and practices relating to the system of adoption and kafalah in order to ensure that under domestic legislation the rights of the child are protected regardless of the child’s origin, civil, social or religious status, and that it ensure that cases of intercountry adoption are dealt with in full accordance with the principles and provisions of the Convention, in particular article 21. The Committee further recommends that the State party ratify the 1993 Hague Convention on Protection of Children and Co-operation in respect of Intercountry Adoption and seek technical assistance, among others, from the Hague Conference on Private International Law and from UNICEF».

7 CRC/C/EGY/CO/3-4, 15 juillet 2011, Paras. 53-54.
8 CRC/C/LBN/CO/3, 8 juin 2006, Paras 43-44.
9 Ibid., Paras. 45-46.
13. In its concluding observations adopted upon the consideration, in January 2006, of the second periodic report of Saudi Arabia submitted under article 44 of the CRC Convention, the Committee expresses concern “...about the discrimination against children on account of their fathers’ nationality. Children of Saudi fathers acquire Saudi nationality at birth, regardless of the child’s birthplace, but Saudi women cannot transmit their Saudi nationality to their children born from a relationship with a non-Saudi man or from a non-marital relationship”.

The Committee, therefore, “...recommends that the State party review its legislation on nationality in order to ensure that nationality can be transmitted to children through both the maternal and paternal line without distinction”.

12. Concerning the right of the child deprived of a family environment to alternative care protection, the Committee while acknowledging with appreciation the kafalah system, expresses concern that “...its application does not ensure the full enjoyment of all rights provided by the Convention. It is also concerned that the placement of children in institutional care is not always used as a measure of last resort”.

The Committee, therefore, “...recommends that the State party continue to develop and implement legislative and other measures, policies and procedures to ensure that children receive, when necessary, adequate alternative care, preferably in their own immediate families or extended families or in kafalah, which fully respects the provisions of the Convention, in particular articles 20 and 21. The Committee invites the State party to strengthen the application of kafalah by amending the relevant laws and by introducing awareness-raising campaigns along with capacity-building measures to ensure that children within the kafalah system fully enjoy their rights as set out in the Convention”.

14. Tunisian Legislator is, without doubt, the most sensitive to the issue of abandoned children. This led him, in particular, to adopt, within two years after the promulgation of the personal status Code of 13 August 1956, the Law no. 58-27 of 4 March 1958, concerning public guardianship, Kafalah and adoption, which constitutes definitely a major achievement distinguishing Tunisia from all other Arab and Muslim countries.

15. In its concluding observations adopted upon the consideration, in June 2010, of the third periodic report of Tunisia, submitted under article 44 of the CRC Convention, the Committee welcomes, among others, “...the adoption of Act no 51 of July 2003 supplementing Act No. 98-75 of 28 October 1998 granting a patronymic family

11 Ibid., Paras 48-49
name to children of unknown parentage or abandoned children...”\(^{12}\).

16. Concerning children born out of wedlock, the Committee while welcoming the efforts made by the State party to facilitate the establishment of legal paternity, expresses concern, however, “...at the high rate of children born out of wedlock placed in institutions resulting from the precarious situation, social discrimination and discrimination single mothers are facing...”.

The Committee, therefore, “…urges the State party to:

(a) Take necessary measures, including legislative ones, to ensure as much as possible maintenance of children born out of wedlock by parents, particularly their fathers, or other persons having financial responsibilities for the child, in compliance with article 27, para. 4 of the Convention;

(b) Provide effective protection and social services for the most vulnerable families and ensure that social safety net schemes give priority to female-headed households; and

(c) Undertake sensitization and awareness-raising measures to eliminate stigmatization and discrimination against single mothers”\(^{13}\).

17. Concerning children deprived of family environment, the Committee “...remains concerned that the trend on the total number of children in residential care in the last ten years has not shown a substantive decrease. It expresses grave concern at the very high number of children born out of wedlock placed in institutions, which represented about 35% of the children deprived of parental care and placed in institutions in 2007”.

The Committee, therefore, “…recommends that the State party:

(a) Give priority to protecting the natural family environment and ensure that removal from the family and placement in foster care or institution is used only as a measure of last resort when in the best interests of child;

(b) Develop a National Plan of Action to implement the de-institutionalization policy in an efficient manner and within a clear time-frame and ensure the establishment of mechanisms for its effective implementation and monitoring;

(c) Develop the system of alternative care services with regulations, minimum standards and appropriate controls;

(d) Ensure the right of the child to be heard at all steps of the alternative care procedure;

(e) Take into consideration the recommendations adopted at the Committee’s day of general discussion on children without parental care held on 16 September 2005 (see CRC/C/153);

(f) Consider ratifying the 1993 Hague Convention on Protection of Children and Cooperation in respect of Intercountry Adoption in order to avoid the sale of children through illegal adoptions”\(^{14}\).


\(^{13}\) Ibid, Paras. 42-43.

\(^{14}\) Ibid, Paras. 42-43.
Final Remarks

18. We measure at the end of this overview the relevance of the 1996 Convention in the MENA region, especially for issues related to the protection of children born out of wedlock, children deprived of family environment, children facing risks of illicit transfer and non-return abroad, and how States gain to adopt laws and to develop various policies, ensuring that, in accordance with article 3, Paragraphe 1 of the CRC Convention, “In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration”.