



MALTA V

Fifth Conference on the HCCH Children's Conventions as Bridges between Civil / Common Law and Islamic Law

24-27 September 2024

Grand Hotel Excelsior, Valetta, Malta

DECLARATION

From 24 to 27 September 2024, more than 130 senior government officials, judges and other experts from 30 States and one Regional Economic Integration Organisation, namely Algeria, Belgium, Brazil, Canada, Egypt, European Union, France, Georgia, Germany, Italy, Japan, Korea, Kuwait, Luxembourg, Malta, Morocco, Netherlands, Norway, Pakistan, Poland, Portugal, Romania, Saudi Arabia, Senegal, Serbia, Singapore, Sweden, Switzerland, Tunisia, United Kingdom, and the United States of America, and the following organisations: the League of Arab States, the Organization for Economic Co-operation and Development (OECD), UNICEF, the International Academy of Family Lawyers (IAFL), the International Bar Association (IBA), IHope, the International Social Service (ISS), the International Mediation Centre for Family Conflict and Child Abduction (MiKK), and reunite, as well as from the Permanent Bureau of the Hague Conference on Private International Law (HCCH), met in Valletta, Malta, for the Fifth Conference on the HCCH Children's Conventions as Bridges between Civil / Common Law and Islamic Law (Malta V).

The participants thanked the Government of Malta for its hospitality and generous support of Malta V. They also thanked the Governments of the Netherlands and the United Kingdom for their voluntary contributions towards the conference.

The participants welcomed, since the Fourth Malta Conference (held in 2016), the accession of Pakistan and Tunisia to the 1980 Child Abduction Convention and noted with satisfaction that various other States have also joined the latter Convention, as well as the 1996 Child Protection Convention and the 2007 Child Support Convention.

In the light of the hypothetical cases studied, experts emphasised the importance of finding solutions to the difficulties encountered in the area of international child protection, affecting the fundamental rights of children, through reinforced international cooperation and, in particular, through accession to, or ratification of, the HCCH Children's Conventions.

Guided by the principles set out in the 1989 *United Nations Convention on the Rights of the Child* (UNCRC), and building on the Malta Declarations of 2004, 2006, 2009, and 2016, the participants unanimously agreed upon the following Conclusions and Recommendations:

1. The participants discussed how to give effect to the UNCRC in cross-border situations and emphasised that the 1980 Child Abduction Convention, the 1996 Child Protection Convention, and the 2007 Child Support Convention assist Contracting States to the UNCRC with the implementation of their obligations under the UNCRC, such as Articles 3, 9, 10, 11, 12, 18, 20, 22, 27(4) and 35.
2. Reflecting on child protection and hypothetical cases discussed at the Conference, it was confirmed that the 1980, 1996 and 2007 Conventions can operate within diverse legal traditions, including Shari'a law. Participants recognised and underlined the important benefits of the HCCH Children's Conventions for Contracting Parties.
3. Participants noted that, as recalled by UNICEF during Malta V, the principle of the best interests of the child should be interpreted in accordance with the UNCRC, its Optional Protocols and the Committee's General Comments, especially *General Comment No 14 on the right of the child to have his or her best interests taken as a primary consideration*. The HCCH Children's Conventions provide a framework to give effect to the rights of children enshrined in the UNCRC, in particular their right that their best interests be a primary consideration in all actions taken concerning them.
4. Participants welcomed the information provided by the OECD on its governance assistance programme focussed on child justice and the rule of law offered to OECD and non-OECD Members, which includes support with the implementation of HCCH Children's Conventions. The OECD highlighted its collaboration with the Good Will Committee in Egypt in relation to child abduction matters.

Parental responsibility, custody and guardianship under Shari'a law and civil / common law legal traditions

5. Participants recalled that according to the 1996 Child Protection Convention parental responsibility, including custody issues, is governed by the law of the State of the habitual residence of the child. Participants noted the importance of this rule in the context of international child abduction cases, to ascertain whether there is a breach of custody, as well as in cross-border custody and/or child protection cases. Central Authorities and/or members of the International Hague Network of Judges (IHJ) can assist by providing information about their laws.
6. Participants acknowledged that the 1996 Child Protection and 1980 Child Abduction Conventions are complementary. For example, the 1996 Convention may prevent and address child abduction by seeking the recognition of a custody order, thus assisting with the return of the child.
7. In the experience of participants from Contracting Parties to HCCH Children's Conventions, dealing with child protection cases outside these Conventions is often more complex and time consuming.

Kafala and the 1996 Child Protection Convention

8. Participants welcomed the explanations given on the conditions and establishment of *kafala* from States which provide for such child protection measure. They underlined the usefulness of the 1996 Convention to give effect, in a cross-border context, to judicial *kafala*, under Article 33.

Key judicial decisions rendered in cross-border child abduction and child protection matters involving civil / common law and Shari'a law States

9. Participants recalled that the 1980 Child Abduction Convention is not about taking a decision on child custody, but rather about the prompt and safe return of the child to the forum to which the child has their habitual residence. Participants noted that the 1980 Convention provides an excellent bridge between States with different legal systems.
10. Participants noted with interest the application by one Contracting Party of the general principles of the 1980 Child Abduction Convention to incoming child abduction cases from non-Contracting Parties.

The International Hague Network of Judges and direct judicial communications

11. Participants emphasised the value of direct judicial communications in international family law. States that have not designated a Judge to the IHNJ, in particular States with Shari'a law and African States, are strongly encouraged to do so regardless of whether they are currently Parties to the HCCH Children's Conventions. Where needed, States may seek the assistance of the Permanent Bureau in making their designation. Judges designated should be sitting judges with appropriate authority and experience in the area of international family law. The process for the designation to the IHNJ should respect the independence of the judiciary.
12. It was noted that other authorities such as the Good Will Committee of Egypt can assist with judicial communications.
13. Participants agreed that exchanges between designated judges, including at bilateral and regional meetings, should be encouraged in order to reinforce mutual trust and confidence among judges.

Mediation, including in child abduction cases

14. Participants noted that mediation reflects the values of Shari'a law and is part of the tradition of States with Shari'a law.
15. Participants acknowledged the benefits of mediation in cross-border family matters and the developments across States in promoting mediation. They encouraged the promotion of good practices in mediation and other alternative dispute resolution mechanisms to address international disputes both where the HCCH Children's Conventions apply and where they do not apply.
16. In the experience of participants from Contracting Parties to the HCCH Children's Conventions, mediation may provide better results when conducted in the context of the HCCH Children's Conventions as they provide legal certainty and predictability.
17. Participants underlined the benefits of having a mediator or co-mediators familiar with the different cultures, legal traditions and languages of the persons involved in the mediation.
18. Participants welcomed the publication by the HCCH in 2022 of the *Practitioners' Tool: Cross-Border Recognition and Enforcement of Agreements Reached in the Course of Family Matters Involving Children*.
19. Participants underlined the importance of mediation agreements having effect through, for example, homologation by and / or registration with a competent authority. Once they have effect, mediation agreements can benefit from recognition and enforcement under the 1996 Child Protection and 2007 Child Support Conventions.

20. Participants also noted the benefits of mediation at the stage of enforcement of return orders in child abduction cases to enable a swift return of the child to their State of habitual residence.
21. Participants underlined the importance of hearing the views of the child, according to their age and maturity, as part of the mediation process, including in child abduction cases. Participants noted the benefits of the mediator or other specialist hearing the child in the absence of the parties to the mediation in accordance with national law.

Working Party on Mediation within the Malta Process

22. Participants welcomed the report by Canada on the Working Party on Mediation within the Malta Process and thanked the Government of Canada for their report. Participants warmly thanked the co-Chairs of the Working Party from Canada, Jordan and Pakistan for their leadership.
23. Participants acknowledged the achievements of the Working Party, including the development of the *Principles for the Establishment of Mediation Structures* and the creation of a system of Central Contact Points for International Family Mediation.
24. States, including those with Shari'a law, are encouraged to consider joining and engaging in the Working Party on Mediation and to implement the Principles.
25. Participants took note of the number of Central Contact Points designated in the context of the Working Party on Mediation within the Malta Process and invited additional States to designate Central Contact Points.
26. Participants supported the recommendation by Canada that the chairmanship of the Working Party on Mediation rotate.

Joining and implementing HCCH Children's Conventions

27. Participants took note of the assessment mechanisms in place within the European Union in relation to the acceptance of accessions of Contracting Parties to the HCCH Children's Convention and to strengthen their implementation within the European Union.
28. Participants underlined the benefits of concentrating jurisdiction for the operation of the HCCH Children's Conventions.

Training and technical assistance

29. Participants emphasised the importance of information and training sessions for government officials, judges, practitioners and other relevant professionals in order to assist with the effective implementation and sound operation of the HCCH Children's Conventions. Participants recognised the value of such assistance being provided by the Permanent Bureau in cooperation with relevant experts from interested States, Contracting Parties, and relevant national, regional and international bodies.
30. The meeting welcomed the wide range of Contracting Parties to the HCCH Children's Conventions which extended offers of assistance, training, and visits to their Central Authorities, for the purpose of sharing expertise and experience with States considering ratifying or acceding to these Conventions.

Follow-up and next steps

31. States that are not currently Party to the 1980, 1996 and 2007 HCCH Children's Conventions are encouraged to consider becoming Parties to these Conventions.
32. Participants at Malta V are invited to bring to the attention of their governmental officials the outcomes of the Malta V discussions.
33. The Permanent Bureau is invited to disseminate broadly the outcomes of the Malta V discussions.
34. States interested in ratifying / acceding to the HCCH Children's Conventions are invited to avail themselves of the offers of training / sharing of expertise by Contracting Parties, as well as of the resources of the Permanent Bureau and, where relevant, information available on the European Union Justice Portal.
35. It was recommended to invite more States from Africa to join the Malta Process and attend Malta Conferences in the future.
36. States that have not yet designated a Judge to the IHNJ, are encouraged to do so. These States are invited to inform the Permanent Bureau of appropriate authorities to contact in their States in order to facilitate the designation to the IHNJ.
37. Participants were invited to actively encourage mediation at all levels and to take advantage of training and other resources offered by non-governmental organisations (NGOs).
38. All States are invited to establish a Central Contact Point for International Family Mediation.
39. Participants emphasised the great value of continued dialogue among Contracting and non-Contracting Parties to the HCCH Children's Conventions through, for example:
 - a. active and consistent participation in the Working Party on Mediation under the Malta Process;
 - b. participation of non-Contracting Parties, as observers, at the next Special Commission meetings where States may report on steps taken towards joining the relevant HCCH Children's Conventions;
 - c. bilateral and regional seminars which engage regional intergovernmental organisations and other regional stakeholders;
 - d. future Malta Conferences; and,
 - e. the availability, in Arabic, of more HCCH documents.
40. Participants expressed the hope that within three to four years a further Malta Conference, Malta VI, would be convened.

Malta, 27 September 2024