



## MALTA V

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

24 – 27 September 2024

Hotel Excelsior, Valletta, Malta

### CONCEPT NOTE

(updated version)

The *Fifth Conference on the HCCH Children's Conventions as Bridges between Civil/Common Law and Islamic Law* (Malta V) will take place in Malta from Tuesday 24 to Friday 27 September 2024. It is organised jointly by the Permanent Bureau (PB) of the Hague Conference on Private International Law (HCCH) and the Government of Malta.

#### 1. BACKGROUND: THE MALTA PROCESS

As was the case with the previous Malta Conferences held in 2004, 2006, 2009 and 2016, Malta V takes place within the [Malta Process](#). The Malta Process was developed within the framework of the HCCH to promote cooperation with States with legal systems based upon or influenced by Islamic (Shari'a) law, for the resolution of complex transfrontier family conflicts, notably issues of protection of contact rights between parents and children, issues of parental child abduction, and recovery of child support. A complementary objective of the Malta Process is to seek broad ratification of / accession to certain HCCH Children's Conventions by States whose legal systems are based upon or influenced by Islamic (Shari'a) law.

A particular aim of the Malta Process is to encourage dialogue between States which are Party to the *Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* (1980 Child Abduction Convention), 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* (1996 Child Protection Convention) and / or the *Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance* (2007 Child Support Convention) and its *Protocol on the Law Applicable to Maintenance Obligations* (2007 Maintenance Obligations Protocol) on the one hand, and, on the other hand, those States that are not Parties to these Conventions whose legal systems are based upon or influenced by Islamic (Shari'a) law.

The issues addressed at past Conferences included:

- how best to secure continuing contact between the child and both parents;
- how to respond to the unilateral removal of a child from one State to another;
- the recovery of child support / maintenance across borders;
- the value of direct judicial communications and designation of members to the International Hague Network of Judges (IHNJ);
- promoting good practices in mediation;
- the value of training and technical assistance regarding the effective implementation and sound

- operation of the HCCH Children’s Conventions;
- the development, for these purposes, of more effective inter-State cooperation at the judicial and administrative levels.

In addition, the [Working Party on Mediation](#), established in 2009 as part of the Malta Process, aims to promote mediation to resolve cross-border child custody or contact disputes where the 1980 Child Abduction and the 1996 Child Protection Conventions do not apply. Working Party members collaborated to develop the Principles for the Establishment of Mediation Structures in the Context of the Malta Process. Moreover, between 2010 and 2019, the Working Party met on an annual basis, and it regularly held regional seminars, bringing together academics, diplomats, subject-matter experts, and other stakeholders. As a result of the COVID-19 pandemic, meetings and events of the Working Party have not taken place since early 2020. In March 2024, the Council on General Affairs and Policy of the HCCH endorsed the continuation of the Malta Process, including the resumption of activities of the Working Party on Mediation.

## 2. PURPOSE OF THE FIFTH CONFERENCE (MALTA V)

- a) To continue and broaden the dialogue among governmental policy makers, experts, judges and other key actors which began with the previous Malta Conferences (see the [Malta Declarations](#) of 17 March 2004, 22 March 2006, 26 March 2009, and 5 May 2016), using a mixed format of plenary presentations, discussions, and hypothetical case studies in breakout sessions.
- b) Facilitated by the guiding framework of the 1980 Child Abduction, 1996 Child Protection, and 2007 Child Support Conventions, to explore:
  - the development of closer cooperation and networking among the judiciaries both regionally and globally;
  - the development of inter-State administrative cooperation both regionally and globally;
  - the availability of measures to prevent abduction or abuse of visiting rights and promote parental cooperation and agreement;
  - the organisation of practical arrangements needed to facilitate cross-border visits;
  - the recognition and enforcement of agreements reached in the course of family matters involving children;
  - the exchange of information concerning the laws and practices of different legal systems.
- c) To continue to identify and elaborate the building blocks for the development of a legal structure which will provide:
  - a firm basis for judicial cooperation; and
  - parents with a secure international framework within which to resolve their differences.

This would include consideration of relevant HCCH Conventions, in particular the 1996 Child Protection Convention and the 2007 Child Support Convention, as well as bilateral and possible regional initiatives. The child protection regime of *kafala* (see Arts 3 and 33 of the 1996 Child Protection Convention), and its usage in a cross-border context, will also be discussed.
- d) To continue a dialogue on the cross-border recovery of child support and other forms of family maintenance, involving judicial or other relevant national actors, and including discussion of the 2007 Child Support Convention and its Protocol.
- e) To raise awareness of the features and advantages of the modern 2007 Child Support Convention system, which replaces the United Nations 1956 *Convention on the Recovery Abroad of Maintenance* (the Contracting States of which include Algeria, Israel, Morocco, Pakistan, Tunisia and Türkiye).
- f) To highlight and discuss the significant benefits, for the more effective resolution of cross-border disputes involving children and families, that States would gain from designating a member to the IHNJ, and to follow up on States’ efforts in this regard. The IHNJ is currently composed of 154 Judges from 89 States worldwide (including judges from Israel, Kenya, Morocco, Pakistan, Singapore and Türkiye).

- g) To follow up on activities and practices to encourage mediation.
- h) To follow up on the communication / dialogue between Contracting and non-Contracting States.

### 3. PARTICIPANTS

The States and the Regional Economic Integration Organisation invited to participate are, in principle:

- those that have participated to previous Malta Conferences, namely Algeria, Australia, Bangladesh, Belgium, Canada, Egypt, the European Union, France, Germany, India, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Libya, Malaysia, Malta, Mauritania, Morocco, Netherlands, Norway, Oman, Pakistan, Portugal, Qatar, Saudi Arabia, Senegal, Singapore, Spain, Sweden, Switzerland, Tunisia, Türkiye, United Kingdom, and United States of America;
- those that have been invited to previous Malta Conferences, but did not participate: Bahrain, Brunei Darussalam, Iraq, Kuwait, and United Arab Emirates;
- a number of new States which have shown an interest.

The invitation has been extended to **two delegates from each State**, including:

- one senior official for consular affairs who deals with children and family matters, in particular in international, cross-border settings (including with foreign States which are not Parties to the 1980 Child Abduction, 1996 Child Protection, and 2007 Child Support Conventions) as they are on the front line in situations where fast, efficient and economical multilateral solutions are not available; and
- one senior official responsible for the protection of children and families (preferably with legal or judicial expertise).

In addition, invitations have been extended to:

- relevant (regional) inter-governmental organisations, including for example, the African Union (AU), the Asian-African Legal Consultative Organization (AALCO), the League of Arab States, the Organisation for Economic Co-operation and Development (OECD), the United Nations Children's Fund (UNICEF), and the United Nations Committee on the Rights of the Child (CRC);
- a limited number of NGOs, including for example, the Gulf Cooperation Council (GCC), the International Academy of Family Lawyers (IAFL), the International Bar Association (IBA), the International Social Service (ISS), MiKK e. V., the Organization of Islamic Cooperation (OIC), Reunite; and
- some independent experts.

A maximum of 130 participants may attend the conference, including representatives from Malta and the PB staff.

### 4. PRACTICAL ARRANGEMENTS

- **Date:** from Tuesday 24 (evening) to Friday 27 September 2024 (lunch time).
- **Venue:** Grand Hotel Excelsior (Valletta).
- **Practical arrangements** (conference facilities including interpretation, development of a social programme, etc.) will be organised jointly by the Government of Malta and the PB.
- **Travel and accommodation:** Each State / organisation should finance and organise its representatives' travel, accommodation and daily subsistence allowance. See *Accommodation Information* document attached to the invitation.
- **Programme:** The PB, in consultation with the authorities of Malta, will coordinate the substantive programme.
- **Working languages:** English, French and Arabic, with simultaneous interpretation.

## 5. FUNDING

The Government of the Republic of Malta has committed to contribute a very significant part of the relevant human and financial resources required for the Conference.

However, in order to ensure a meaningful dialogue during the Conference between States Parties to HCCH Conventions and States with legal systems based upon or influenced by Islamic (Shari'a) law which are not Party to HCCH Conventions, the PB has also been seeking voluntary contributions to ensure the participation of as many delegates as possible from ODA (Official Development Assistance) States from those countries.

THE HAGUE, 18 July 2024