



**Fourth Malta Conference ("Malta IV")
on Cross-Frontier Child Protection and Family Law
Hosted by the Government of Malta in Collaboration
with the Hague Conference on Private International Law (HCCH)
"The Malta Process"**

DECLARATION

From 2 to 5 May 2016, more than 130 senior government officials, judges and other experts from 34 countries, including Algeria, Australia, Bangladesh, Belgium, Canada, France, Germany, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Libya, Malaysia, Malta, Mauritania, Morocco, the Netherlands, Norway, Pakistan, Portugal, Saudi Arabia, Senegal, Singapore, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom and the United States of America, from the Asian-African Legal Consultative Organization (AALCO), the United Nations Committee on the Rights of the Child, the European Union (the Commission, the Parliament and the Council), the Association of International Family Judges (AIFJ), the International Academy of Family Lawyers (IAFL), the International Social Service (ISS), MiKK, Missing Children Europe and Reunite, as well as from the Permanent Bureau of the Hague Conference on Private International Law (HCCH), met in Valletta, Malta, for the Fourth Malta Conference on cross-frontier child protection and family law.

The experts thanked the Government of Malta for its excellent hospitality and very generous support of Malta IV. They also thanked the Governments of Austria, Canada, France, Germany, the Netherlands, Switzerland, the United Kingdom and the United States of America, which had contributed additional resources to the conference.

The participating experts welcomed, since the Third Malta Conference, the accession of Morocco and Iraq to the 1980 Child Abduction Convention¹ and noted with satisfaction that an increasing number of States have joined the latter Convention, as well as the 1996 Child Protection Convention² and the 2007 Child Support Convention.³

In the light of the hypothetical cases studied, experts recognised the utility of finding solutions to the difficulties encountered in the area of international child protection, affecting the fundamental rights of children, through reinforced international co-operation and, in particular, through accession to or ratification of the Hague Children's Conventions.

Guided by the principles set out in the 1989 *United Nations Convention on the Rights of the Child*, and building on the Malta Declarations of 2004, 2006 and 2009, as well as on successful outcomes of regional seminars and bilateral meetings, the participants unanimously agreed upon the following Conclusions and Recommendations:

¹ The Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction.

² The Hague Convention of 19 October 1996 on Jurisdiction, Applicable Law, Recognition, Enforcement and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children.

³ The Hague Convention of 23 November 2007 on the International Recovery of Child Support and Other Forms of Family Maintenance (and the Hague Protocol of 23 November 2007 on the Law Applicable to Maintenance Obligations).

The 1989 United Nations Convention on the Rights of the Child, the Hague Children's Conventions and diverse legal traditions

1. The experts recognised that the 1980 Child Abduction Convention, the 1996 Child Protection Convention and the 2007 Child Support Convention support a number of key principles expressed in the 1989 *United Nations Convention on the Rights of the Child*, all in the best interests of children, including:
 - a. the right of a child whose parents reside in different States, to maintain on a regular basis personal relations and direct contacts with the parents, which can only be limited in exceptional circumstances;
 - b. the obligations of States to take measures to combat the illicit transfer and non-return of children abroad;
 - c. the right of every child to a standard of living adequate for the child's physical, mental, spiritual, moral and social development; and,
 - d. the obligations of States to take all appropriate measures to secure the effective recovery of maintenance obligations from abroad.
2. The experts noted that the above Hague Children's Conventions are designed to be global in reach and to be compatible with diverse legal traditions. Experts underlined the important benefits of the Hague Children's Conventions for States Parties.

The 1980 Child Abduction Convention and the 1996 Child Protection Convention

3. The experts recognised 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 he or she has the closest connection (the forum of the child's habitual residence). They also noted that the 1980 Child Abduction Convention provides a structure to support family relationships, by providing a civil, non-criminal procedure to return a child when taken abroad by a parent or a custodian.
4. The experts acknowledged that the 1996 Child Protection Convention and the 1980 Child Abduction Convention complement each other. For example, the 1996 Convention may prevent international child abduction through enforceable measures facilitating relocation, and assists with return under the 1980 Convention.
5. The experts noted the wide array of cross-border circumstances in which the 1996 Child Protection Convention and its international co-operation mechanisms could be utilised, including in relation to:
 - a. the provision of a legal framework for the resolution of international disputes concerning custody and contact of children with their parents;
 - b. the protection of children at risk in cross-border situations, including unaccompanied minors, asylum-seekers / refugees, victims of human trafficking, run-aways and migrants; and,
 - c. the cross-frontier placement and care of children, including arrangements made by way of the Islamic institution of *kafala*.

The 2007 Child Support Convention

6. The experts recognised that the 2007 Child Support Convention provides for prompt, accessible, efficient, responsive, cost-effective and fair mechanisms for the international recovery of child support and other forms of family maintenance, relieving pressure on national social services. The 2007 Child

Support Convention replaces, between Contracting States, the 1956 *United Nations Convention on the Recovery Abroad of Maintenance*.

7. The experts noted that the 2007 Child Support Convention is important for families and children on the basis that parents or others responsible for the child have the primary responsibility to secure, within their abilities and financial capacities, the conditions of living necessary for the child's development.

The International Hague Network of Judges and direct judicial communications

8. The experts emphasised the value of direct judicial communications in international child protection cases. States that have not designated International Hague Network Judges are strongly encouraged to do so regardless of whether they are currently Parties to the Hague 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 child protection. The process for the designation of International Hague Network Judges should respect the independence of the judiciary.
9. The participants agreed that judicial exchanges, including bilateral and regional meetings, should be encouraged in order to reinforce mutual trust and confidence among judges.
10. Since the Third Malta Conference, the meeting welcomed the publication of the *Emerging Guidance regarding the development of the International Hague Network of Judges and General Principles for Judicial Communications, including commonly accepted safeguards for Direct Judicial Communications in specific cases, within the context of the International Hague Network of Judges*.

Mediation

11. The experts acknowledged the benefits mediation can offer in cross-border family matters. They encouraged the promotion of good practices in mediation and other processes to bring about the agreed resolution of international disputes which fall within the scope of the Hague Children's Conventions, and in the context of other relevant cross-border child and family disputes.
12. The experts welcomed the report of the Working Party on Mediation within the Malta Process and warmly thanked the co-Chairs for their leadership. The achievements of the Working Party include 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. States with legal systems based on, or influenced by, Shari'a law are encouraged to consider joining and engaging in the Working Party on Mediation and to implement the Principles.
13. The conference recognised the value of the academic research that has been undertaken within the frame of the Working Party, and looked forward to the continuation of such research.

Training and technical assistance

14. The 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 Hague Children's Conventions. The participants recognised the

value of such assistance being provided by the Permanent Bureau in co-operation with relevant experts from interested States, Contracting States, and relevant national, regional and international bodies.

15. The meeting welcomed the wide range of Contracting States to the Hague 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

16. States that are not currently Party to the Hague Children's Conventions of 1980, 1996 and 2007 are encouraged to consider becoming Parties to these Conventions.
17. Participants at Malta IV are invited to bring to the attention of their governmental officials the outcomes of the Malta IV discussions.
18. The Permanent Bureau is invited to disseminate broadly the outcomes of the Malta IV discussions.
19. States interested in ratifying / acceding to the Hague Children's Conventions are invited to avail themselves of the offers of training / sharing of expertise by Contracting States, as well as of the resources of the Permanent Bureau.
20. All States are invited to designate a Network Judge. Participants in Malta IV whose country does not yet have a Network Judge are invited to inform the Permanent Bureau of appropriate authorities to contact in their States in order to effect a designation to the International Hague Network of Judges.
21. Participants are invited to actively encourage mediation at all levels and to take advantage of training and other resources offered by non-governmental organisations (NGOs). All States are invited to establish a Central Contact Point for International Family Mediation.
22. The conference emphasised the great value of continued dialogue among Contracting and non-Contracting States to the Hague Children's Conventions through, for example:
 - a. active and consistent participation in the Working Party on Mediation;
 - b. participation of non-Contracting States, as observers, at the next Special Commission meeting to review the 1980 and 1996 Conventions (in October 2017), where States may report on steps taken towards joining the relevant Hague 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 Hague Conference documents.

Malta, 5 May 2016