



GOVERNMENT OF MALTA
MINISTRY FOR SOCIAL POLICY
AND CHILDREN'S RIGHTS



MALTA CONFERENCES

Declarations of past Malta Conferences (Malta I to V)

This document includes the Declarations of past Malta Conferences from 2004 to 2024.



GOVERNMENT OF MALTA
MINISTRY FOR SOCIAL POLICY
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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 (IHNJ) 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



MALTA IV (2016)

Fourth Malta Conference
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

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).

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:

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

41. 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.
42. 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

43. 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.
44. 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.
45. 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

46. 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*.
47. 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

48. 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.
49. The participants agreed that judicial exchanges, including bilateral and regional meetings, should be encouraged in order to reinforce mutual trust and confidence among judges.
50. 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

51. 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.
52. 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.
53. 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

54. 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.
55. 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

56. 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.
57. Participants at Malta IV are invited to bring to the attention of their governmental officials the outcomes of the Malta IV discussions.
58. The Permanent Bureau is invited to disseminate broadly the outcomes of the Malta IV discussions.
59. 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.
60. 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.
61. 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.
62. 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



MALTA III (2009)

Third Malta Judicial Conference on Cross-Frontier Family Law Issues

Hosted by the Government of Malta in Collaboration
with the Hague Conference on Private International Law

DECLARATION

On 23-26 March 2009, 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 of America, the European Commission, the European Parliament, the Council of the European Union, the United Nations 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, as well as the Hague Conference on Private International Law, met in St. Julian's, Malta, for the third round of discussions on how to secure better protection for cross-frontier rights of contact¹ of parents and their children and the problems posed by international abduction between the States concerned.

The participating Judges and Experts, noting the progress made following the First and Second Malta Declarations (see Annexes), and again guided by the principles set out in the *United Nations Convention on the Rights of the Child* of 1989, agreed the following on the understanding that the conclusions and recommendations are not binding on the States from which the Judges and Experts are drawn:

1. The conclusions and recommendations set out in the First and Second Malta Declarations are re-affirmed and, in the case of Judges and Experts who were not party to those Declarations, fully endorsed in their spirit.

Co-operation between "Hague State Parties" and "non-Hague State Parties"

2. 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.² "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.

¹ The word "contact" is used in a broad sense to denote any means, ranging from communications to periods of visitation, by which the relationship between a child and a parent may be maintained.

² The relevant Hague Conventions are those mentioned in para. 3.

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.

1996 Child Protection Convention

3. Understanding the benefits of a legal framework for the resolution of international disputes concerning custody and contact with children, and for the protection of children at risk in cross-border situations, the participants recommend that States give careful consideration to the ratification of, or accession to, 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*.

The *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* merits similar close attention.

Mutual recognition of decisions

4. 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.³

Central Authorities

5. The administrative authority (the Central Authority) is an essential structure in each country to facilitate effective access to legal and administrative procedures for parents and children affected by cross-border family disputes.

The Central Authority has a vital role as:

- the first point of contact for parents needing information, advice and assistance in cross-border disputes;
- the first point of contact for co-operation and exchange of information between countries and between national authorities and agencies;
- the national body with expertise and experience in managing cross-border family law cases.

The benefits of co-operating within a global network of Central Authorities are emphasised.

The Technical Assistance Programme of the Hague Conference on Private International Law may be able to provide advice and assistance to countries wishing to establish and consolidate their Central Authority.

Locating the child

6. Where a child cannot be located, no measures to ascertain or protect the best interests of the child are possible. Assistance in promptly locating the child is therefore a vital role of the administrative and judicial authorities where seized.

Development of mediation services

7. Convinced of the need urgently to develop a more effective structure for the mediation of cross-border family disputes which involve, on the one hand, a State Party to a relevant Hague Convention and, on the other hand, a non-State Party, the participants recommend the

³ For example, by a “mirror” order.

establishment, under the aegis of the Hague Conference on Private International Law, of 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. The Working Party should comprise experts drawn from the States concerned, as well as independent experts with experience and expertise in the field of international family mediation.

The work should be guided by the principles contained in the *United Nations Convention on the Rights of the Child* and in particular “the right of the child to maintain on a regular basis, save in exceptional circumstances, personal relations and direct contact with both parents...”.

The Working Party should have regard to the need to promote structures and methods of mediation which:

- are compatible with different legal and administrative systems;
- are capable of utilising existing resources available in private and public sectors;
- are respectful of the rights of the parties including the child;
- ensure fairness between the parties within the mediation process and respect cultural differences;
- operate within, or in conjunction with, existing legal procedures;
- are without prejudice to the rights of the parties to have access to judicial proceedings; and
- avoid delay or the misuse of mediation to impede the progress of legal proceedings.

The Working Party should consider any practical measures needed to ensure that mediated agreements are respected and, if necessary, legally enforceable in the countries concerned.

The Working Party should consider possible ways in which States concerned could facilitate access to mediation services, including through the medium of authorities with the responsibility to provide information concerning mediation services and to assist in initiating mediation in international cases.

To assist the Working Party, participants undertake, on returning to their countries:

- to identify any existing mediation services willing to consider the development of the skills and services needed to undertake mediation of international disputes concerning custody of and contact with children;
- to identify NGOs which would be willing to become involved in the establishment of a specialist mediation service; and
- to communicate these findings to the Permanent Bureau, if possible, within three months from the date of this Declaration.

General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children

8. Participants welcome the publication by the Permanent Bureau of the *General Principles and Guide to Good Practice on Transfrontier Contact Concerning Children* which provides guidance relevant to States which are, as well as States which are not, Parties to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and 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*. Particular attention is drawn to the importance for courts to have at their disposal “a flexible range of measures which create a legal environment in which both parents feel a sense of security that contact arrangements will not be abused”.

Direct judicial communications and designation of International Hague Network Judges

9. The conference emphasises 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. This includes States that are not Parties to the relevant Hague Conventions. It is recognised that in some States designations may be difficult and in that respect, such States, where appropriate, 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.

As a general rule, designations should be formal. Where a designation has been made on an informal basis, every effort should be made without delay to obtain a formal designation from the relevant authority.

The process for the designation of International Hague Network Judges should respect the independence of the judiciary.

Training programmes

10. Judges and other professionals from “Hague State Parties” and “non-Hague State Parties” dealing with international family disputes and child protection matters should have opportunities to increase their knowledge and understanding of the relevant international instruments and procedures through:

- information sessions;
- seminars and conferences;
- participation in judicial networks;
- receiving *The Judges’ Newsletter on International Child Protection*.⁴

The Permanent Bureau of the Hague Conference on Private International Law offers its expertise to participate or assist in any such training programmes.

Issuing of visas

11. The issuing of a visa, passport or other travel document to enable a parent to have contact with his or her child remains a contentious issue. Authorities deciding whether or not to issue a visa, passport or other travel document for this purpose should also take into account, consistent with national law, the rights and welfare of the child, as well as of the parent.

Thanks are extended to Canada, Germany, the Netherlands, Sweden, the United Kingdom and the United States of America for their financial support for this conference, and to the Government and judiciary of Malta for their role once again in promoting and providing an ideal setting for successful dialogue.

26 March 2009

⁴ Published by the Permanent Bureau and available on the Hague Conference website at < www.hcch.net > under “Publications”.



MALTA II (2006)

Second Malta Judicial Conference on Cross-Frontier Family Law Issues

Hosted by the Government of Malta in Collaboration
with the Hague Conference on Private International Law

DECLARATION

On 19-22 March 2006, Judges and Experts from Algeria, Australia, Belgium, Canada, Egypt, France, Germany, Indonesia, Lebanon, Libya, Malaysia, Malta, Morocco, the Netherlands, Sweden, Tunisia, Turkey, the United Kingdom, the United States of America, the European Commission, the European Parliament, the Council of the European Union, the International Social Service, the International Centre for Missing and Exploited Children and Reunite, as well as the Hague Conference on Private International Law, met in St. Julian's, Malta, for the second round of discussions on how to secure better protection for cross-frontier rights of contact¹ of parents and their children and the problems posed by international abduction between the States concerned.

The participating Judges and Experts, noting the progress made following the first Malta Declaration (copy attached), and again guided by the principles set out in the *United Nations Convention on the Rights of the Child* of 1989, agreed the following:

1. The conclusions and recommendations set out in the first Malta Declaration are re-affirmed and, in the case of Judges and Experts who were not party to that Declaration, fully endorsed.
2. The centralised administrative authorities (sometimes called Central Authorities) which act as a focal point for cross-border co-operation in securing cross-frontier contact rights and in combating the illicit transfer and non return of children should be professionally staffed and adequately resourced. There should be continuity in their operation. They should have links internally with child protection, law enforcement and other related services, and externally they should have the capacity to co-operate effectively with their counterparts in other countries. Their role in promoting the amicable resolution of cross-frontier disputes concerning children is emphasized.
3. Intensified activity in the field of international family mediation and conciliation, including the development of new services, is welcomed.
The importance is recognised of having in place procedures enabling parental agreements to be judicially approved and made enforceable in the countries concerned.

¹ The word "contact" is used in a broad sense to denote any means, ranging from communications to periods of visitation, by which the relationship between a child and a parent may be maintained.

Legal processes concerning parental disputes over children should be structured so as to encourage parental agreement and to facilitate access to mediation and other means of promoting such agreement. However, this should not delay the legal process and, where efforts to achieve agreement fail, effective access to a court should be available.

International family mediation should be carried out in a manner which is sensitive to cultural differences.

4. More consideration should be given to the implementation of measures, administrative, judicial and psychosocial, designed to prevent the unlawful removal or retention of children or to secure the conditions of contact. The Guide to Good Practice on Preventive Measures, published by the Hague Conference on Private International Law, which contains many examples of preventive measures operating in different countries, should be widely disseminated. Preventive measures should be employed whenever their need is justified; and the measures taken should be proportionate to the risks and consequences of unlawful removal or retention of the child in the particular case.
5. 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, discourage parental agreement, and can encourage the unlawful removal or retention of children.

It is noted that many States are now considering implementation of the uniform rules of jurisdiction set out in 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*. The Permanent Bureau of the Hague Conference on Private International Law is encouraged to provide States on request with technical assistance in this process. Efforts should be made to ensure that resources are made available for this purpose. The same applies to the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction*.

6. The development in a number of countries of specialised family courts is welcomed. The movement in some countries towards a concentration within the jurisdiction of courts dealing with international disputes concerning children is noted, recognising that in some legal systems such concentration is impracticable.
7. The efforts of the Hague Conference on Private International Law to provide training programmes for the judiciary in matters of international child protection are noted and supported.
8. It is regrettable that, despite the recommendation contained in the first Malta Declaration, the issuing of visas to enable the exercise of parental rights of contact remains a problem in some countries. The relevant authorities are urged to take positive action on this matter.
9. The further development since the first Malta Declaration of the international network of liaison judges is welcomed. New legislative provisions in respect of liaison judges in certain States are welcomed, as well as the development of specific models adapted to the needs of particular States, including Federal States.² It is emphasised that encouragement for the appointment of liaison judges extends to States which are not Parties to the Hague Children's Conventions.

The Judges' Newsletter on International Child Protection serves as a valuable medium for the exchange of information and opinion among judges in all countries and for the promotion of judicial seminars and conferences.

² Significant regional developments such as the European Union Judicial Network in Civil and Commercial Matters, are also welcomed.

10. Attention is drawn to the importance of disseminating information on national laws and procedures concerning child protection, in particular through the establishment of websites for this purpose, including the website of the Hague Conference. Appreciation is expressed for all efforts in this matter, including those of non-governmental organisations.
11. The process of dialogue, now known as the “Malta Process”, should continue, with the assistance of the Hague Conference and in co-operation with other international organisations including the European Union.

In addition, an invitation will be extended to all States represented to participate in the fifth meeting³ of the Special Commission of the Hague Conference to review the practical operation of the 1980 Hague Convention and issues surrounding the implementation of the 1996 Hague Convention. Participation in the Special Commission does not imply any obligation to accede to these Conventions but provides a welcome opportunity to continue a dialogue with a broader range of States and to benefit from a wide international experience in the international protection of children.

12. Recognition is accorded to regional initiatives, for example those instituted by the European Union in the Euromed context, as a means of promoting the objectives of the Malta process.

Thanks are extended to Germany, the Netherlands, Sweden and the United Kingdom for their financial support for this conference, and to the Government and judiciary of Malta for their role once again in promoting and providing an ideal setting for successful dialogue.

22 March 2006

³ To take place in The Hague from 30 October to 9 November 2006.



MALTA I (2004)

The Malta Judicial Conference on Cross-Frontier Family Law Issues

Hosted by the Government of Malta in Collaboration
with the Hague Conference on Private International Law

DECLARATION¹

On 14-17 March 2004, Judges and Experts from Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia, the United Kingdom, the European Commission, the Council of the European Union, the International Social Service and Reunite, as well as the Hague Conference on Private International Law, met in St. Julian's, Malta, to discuss how to secure better protection for cross-frontier rights of contact² of parents and their children and the problems posed by international abduction between the States concerned.

The participating Judges and Experts agreed the following:

1. The principles set out or implicit in the *United Nations Convention on the Rights of the Child* of 1989 are affirmed as a basis for action. In particular:
 - a) in all actions concerning children, the best interests of the child shall be a primary consideration;
 - b) 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;
 - c) a child should have the opportunity to learn to know and respect the culture and traditions of both parents;
 - d) States are obliged to take measures to combat the illicit transfer and non-return of children abroad.
2. Efficient and properly resourced authorities (Central Authorities) should be established in each State to co-operate amongst one another in securing cross-frontier rights of contact and in combating the illicit transfer and non-return of children. Such co-operation should include at least:

¹ The Declaration is non-binding. It may inspire, but is not intended to replace, possible bilateral or other arrangements between States.

² The word "contact" is used in a broad sense to denote any means, ranging from communications to periods of visitation, by which the relationship between a child and a parent may be maintained.

- assistance in locating a child;
 - exchange of information relevant to the protection of the child;
 - assistance to foreign applicants in obtaining access to local services (including legal services) concerned with child protection.
3. Steps should be taken to facilitate, by means of mediation, conciliation, by the establishment of a commission of good offices, or by similar means, solutions for the protection of the child which are agreed between the parents.
 4. The use of guarantees and safeguards to help ensure the effective exercise of contact rights, and to prevent their abuse, should be explored and promoted. This should include financial guarantees, preventive measures and the use of methods appropriate within the cultural, religious and legal traditions of the parties.
 5. The importance is recognised of having common rules which specify which country's courts or authorities are competent to make decisions concerning custody and contact.
 6. Decisions concerning custody or contact made by a competent court or authority in one country should be respected in other countries, subject to fundamental considerations of public policy and taking into account the best interests of the child.
 7. Speed in both administrative and judicial processes is of the essence because delays which prolong the separation of a child from a parent may have devastating consequences for the parent-child relationship.
 8. The cases under consideration need to be handled by experienced judges. Judicial training, as well as concentration of jurisdiction among a limited number of courts, contribute to the development of the necessary expertise.
 9. States should facilitate the cross-frontier movement of parents or children, where necessary, to enable rights of contact to be exercised. To this end, visas should be made available,³ free circulation should be guaranteed within the country in which contact is to take place, and consideration should be given to the establishment of contact centres.
 10. 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, as well as meetings between judges (and other officials) at a bilateral or a multilateral level, are a necessary part of building this trust and confidence.⁴
 11. Networking between judges concerned with international child protection is a growing phenomenon, ideally assisted by the appointment of liaison judges. Judicial networking facilitates the exchange of information as well as direct communications between judges, where appropriate, in specific cases.
 12. There should be established, with the assistance of the Hague Conference, an international database containing relevant information concerning laws and procedures in each State. Judges should transmit significant decisions and other judicial measures to the Hague Conference with a view to their inclusion on the existing International Child Abduction Database (INCADAT).
 13. The process of dialogue should continue, with the assistance of the Hague Conference in co-operation with other international organisations including the European Union, with a view to the progressive elaboration and implementation of these conclusions.

³ This is dependent on the provision by parents to the relevant authorities of all the documentation and other information necessary to determine the visa application.

⁴ For example, in the Euromed context.

14. Translations into Arabic should be prepared of the texts of the essential Conventions of the Hague Conference on Private International Law, in particular those concerning the protection of children,⁵ to enable widespread diffusion of the norms and principles contained in these international instruments and to spread knowledge and awareness of the texts.

Thanks are extended to Germany, the Netherlands, Sweden and the United Kingdom for their financial support for this conference, and to the Government and judiciary of Malta for its active role in promoting and providing an ideal setting for successful dialogue.

17 March 2004

⁵ The two Conventions particularly relevant are the *Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction* and 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*.