

Hague Conference Update Permanent Bureau of the Hague Conference on Private International Law

The Third Malta Conference, hosted by the Government of Malta in collaboration with the Hague Conference on Private International Law, took place in St. Julian's (Malta) on 24–26 March 2009. The Conference continued the process of dialogue started in the first and second Malta Conferences in 2004 and 2006 (see March [2009] IFL 62, and the Child Abduction section at: www.hcch.net) and resulted in the Third Malta Declaration. The First and Second Malta Declarations are available under http://www.hcch.net/upload/maltadecl_e.pdf and http://www.hcch.net/upload/maltadecl2_e.pdf.



**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. Continuing efforts should also be made to develop the mutual trust and understanding between "Hague State Parties" and "non-Hague

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.

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.

³ For example, by a “mirror” order.

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 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.

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

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