



**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.

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.

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.

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.

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

./. Attachment mentioned.

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

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

ATTACHMENT



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.

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.

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 cooperation should include at least:
 - 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

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.

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.
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*.