

DÉCLARATIONS DE MALTE

document établi par le Bureau Permanent

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MALTA DECLARATIONS

document drawn up by the Permanent Bureau

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Convention Enlèvement d'enfants de 1980 et de la
Convention Protection des enfants de 1996*

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Special Commission of January 2012 on the practical operation of the
1980 Hague Child Abduction Convention and the
1996 Hague Child Protection Convention*

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**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 below), 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 State Parties" authorities which is a prerequisite for successful international legal co-operation.

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.

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



**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 (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

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

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

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



**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:
 - 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.

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.

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).

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.

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*.

Bureau Permanent | Permanent Bureau
6, Scheveningseweg
2517 KT La Haye | The Hague
Pays-Bas | The Netherlands
téléphone | telephone +31 (70) 363 3303
télécopieur | fax +31 (70) 360 4867
courriel | e-mail secretariat@hcch.net
site Internet | website <http://www.hcch.net>

L'Organisation mondiale pour la coopération transfrontalière en matière civile et commerciale

The World Organisation for Cross-border Co-operation in Civil and Commercial Matters