



**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 cooperation 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

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.

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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*.