

## **THIRD MALTA JUDICIAL CONFERENCE ON CROSS-FRONTIER FAMILY LAW ISSUES:**

### **INTRODUCTION:**

The Conference commenced with a brief background to the Hague Conference in general, and to the previous Malta Conferences in 2004 and 2006. It was hoped that this year's conference would be able to reach some more practical conclusions and recommendations. A full list of the participants can be found in Appendix 1.

A number of principles were acknowledged and highlighted:

- Respect for different cultural, religious and legal systems
- Diversity of systems based on the Sharia
- High-level mutual co-operation is required on all sides
- The importance of providing information about what is available
- The importance and development of mediation to resolve family issues
- The development of "common rules" on jurisdiction is key to progress
- The processes themselves need "speeding up"

Some broad aims of the Conference were identified:

- To continue expanding the network of countries involved in the continuing process of the Malta Conference
- To look at further development of mediation as an important way forward with such problems
- Maintenance/alimony issues and their impact on the process
- Agreed rules on jurisdiction

The main Conventions that the Conference would be considering are:

- the Child Protection Convention of 1996, as it is the only one which addresses the issue of jurisdiction specifically
- the Convention on the International Aspects of Child Abduction 1980, which has now been ratified by 81 States, and seeks to promote action by mutual consent or by the relevant legal authorities (33% of cases are resolved by agreement)
- the recently concluded (November 2007) Convention on the International Recovery of Child Support and Other Forms of Family Maintenance

## **COUNTRY REPORTS:**

### **Original group members of the “Malta Process”:**

#### **Australia:**

Reported a growing Moslem population (7.5% in Sydney). They have concluded bi-lateral agreements with Egypt and Lebanon. The use of mediation is growing and is expected to develop further. Importance of “welfare reports” identified.

#### **Belgium:**

In 2005 the Department of International Abduction was established. It provides information to parents, including a 24 hour helpline. They provide assistance with visitation issues. There is a fund for the repatriation of children to Belgium. They organise training on Child Abduction. Mediation is a recognised intervention. They have developed a “co-operation” Project with Morocco.

#### **Canada:**

1 million Canadians are Moslem. Increase in numbers of child abductions has led to more in depth exploration of return mechanisms. They are actively exploring possible implementation and timing of the 1996 Child Protection Convention. They have 2 bi-lateral agreements, with Egypt and Lebanon focussing on consular and humanitarian issues. They are looking at structured mechanisms for international mediation.

#### **Egypt:**

International disputes are increasing. The Ministry of Justice co-ordinates child and family legal matters. In 2004 they introduced a mechanism for cases to be settled via mediation by a magistrate. Also an Office for Settlement of Family Disputes which examines case from an “equal and impartial” view. Legal costs have been significantly reduced. Judicial assistance is available. Despite being parties to various conventions, some bi-lateral agreements have been necessary to remove specific obstacles.

#### **France:**

Stressed the importance of communication. The Bureau of Civil Assistance which deals with child abduction and contact issues is located in the Ministry of Justice. They have many bi-lateral agreements, and meet regularly with Tunisia and Morocco. The Central Authority provides various forms of assistance including mediation.

### **Germany:**

Non-Hague countries are dealt with by the Ministry of Justice, otherwise it is the Central Authority. They are more hesitant with bi-lateral agreements preferring a “multi-lateral” approach. They have specialised Family Courts and bi-annual seminars for Judges, to which foreign judges are always invited. They acknowledged criticism for being “over-protective” towards German children.

### **Malaysia:**

Operate within a Federal system, where the Constitution provides the civil and criminal law. Each of the 13 States have their own Sharia Courts. The UNCRC was ratified in 1995, and 2002 they became a party to the 1996 Convention on Child Protection. They are committed to children’s rights and welfare. Child abduction is not a big problem. Their Child Protection legislation is based on the UNCRC. In 2005 they set up a specialised Division within their Department of Social Welfare for matters to do with children. Child trafficking is currently being looked at.

### **Morocco:**

Party to the 1980 and 1996 Conventions. Committed to implementation of bi-lateral agreements. Particularly concerned with the “illegal transfer of children”. Their legislation is currently being updated, but no effort is spared to respect the rights of the child. Have introduced a mechanism to strengthen the role of mediation in protecting the rights of children. Committed to the “Malta process”.

### **Netherlands:**

Both Central Authority and Ministry of Justice are involved, and they are parties to the 1980 and 1996 Conventions, and also bound by the Brussels 2 Regulations. Overall they feel there is an imbalance, and that assistance needs to be fairer and more widely available. Generally there are more cases, and The number of child protection cases has increased dramatically and mediation is being used increasingly. In 2008 130+ cases. Are training mediators and will soon have a group of 20 trained international mediators. Referred to the use of “liaison judges” in international cases. In cases of child abduction, the first hearing takes place within 2 weeks; mediation is offered immediately – the “pressure-cooker” model, if there is not an agreement within 2 weeks, the case returns to Court for a quick judgement.

### **Sweden:**

Child abduction and contact issues are given high priority. Cases with non-Hague countries are generally less successful. For all these cases the Swedish jurisdiction has been centralised to the Stockholm District Court.. Time-scales for dealing with cases has been reduced. They have concluded bi-lateral agreements with Tunisia, Morocco and Egypt. Information for parents has been improved, there are leaflets for parents

and information online. They have also established a fund to help parents with the process, and this has led to an increase in the number of agreements.

### **Tunisia:**

More mixed marriages have led to greater problems and conflicts within them. They use bi-lateral agreements, and will recognise arrangements for contact made by other jurisdictions. They support the UNCRC, and the recovery of maintenance. They will decide on jurisdiction by the ceremony of marriage or the country where it took place. The rights of Tunisians no longer prevail, following the introduction of legislation on private international law. Priority is the interests of the child (not the interests of Islam). Increasing the use of mediation to resolve cases.

### **Turkey:**

In 2000 the 1980 Convention on Child Abduction was enforced. Abduction is an imprisonable offence. They have not yet ratified the Convention on the Protection of Children.

### **United Kingdom:**

The Foreign Office deal with non-Hague countries, otherwise it is the Ministry of Justice and Central Authority. In recognition of the numbers and importance attached by the Government and Chief Justice created the Office of International Family Justice. Bi-lateral agreements with Egypt and Pakistan have arisen out of the Malta process. Open discussion and facing up to the problems is the key to progress. Despite its existence, nevertheless the Protocol does need to be implemented in Pakistan more widely. Its existence is felt to deter abduction to some extent at least. With Egypt, jurisdiction is decided by "habitual residence". There has been a low level of cases, and there are no statistics, though the numbers appear to have increased recently. The "Cairo Declaration" needs to be absorbed into Egypt's formal legal system to work properly. Despite there being consensus and willingness to move things forward, often the problem is in convincing/persuading ministers and legislators.

### **United States:**

Nationally workloads and the staff to deal with them have both increased. The US is planning to sign and implement the 1996 Convention on Child Protection. They do use bilateral agreements but prefer the Hague Conventions. They have memorandums of understanding with Egypt, Tunisia and Jordan regarding access. Mediation is used to prevent abductions. Because individual States have priority in Family Law matters there are differences in practice and problems over the US as a whole.

### **European Commission:**

The protection of the rights of the child is a clear priority. The introduction of the Brussels 2 Regulations, with their emphasis on “expediency and diligence”, and the 6 week timetable reinforces this. European Union countries do not need other systems now. The EU will be issuing a Directive on mediation before 2011.

### **Newcomers to the “Malta Process”:**

#### **Bangladesh:**

Ratified the UNCRC in 1990. There is an old piece of legislation from 1890 which prevents mothers being given “guardianship”. The principle of the child’s interests being paramount has been established in the Courts.

#### **India:**

India also has problems with territorial/judicial issues. They do not use bilateral agreements. They have now signed the 1980 and 1996 Conventions. The welfare of minor children is paramount. Mediation is encouraged to resolve marital and family disputes.

#### **Israel:**

Feel that much greater dialogue is needed to implement the UNCRC across borders. States need to recognise the needs of children in the same way that they expect parents to consider it. Their situation is complicated by a population with many different legal/cultural/religious backgrounds; and the background of their Civil Law. They are parties to the 1980 Convention, and are looking to join the 1996 Convention also. Parents are not allowed to remove a child from the country without permission. They are hoping for mediation to be introduced soon.

#### **Jordan:**

They felt that such meetings as this conference were an “ideal process” to help advance the settlement of family issues. In Jordan there are specialised judicial institutions dependent on people’s status, and also to deal with international matters. The rights of non-custodial parents are recognised.

#### **Malta:**

Mediation is required prior to any Court ruling. They use multi-disciplinary teams. They have a Contact Centre for supervised access.

### **Oman:**

The UNCRC has been ratified (with reservations). They are in the process of developing their own laws relating to the Rights of Children.

### **Pakistan:**

The welfare of the child is the guiding principle. The question of “habitual residence” is the key to establishing the proper jurisdiction. The removal of children without permission/consent from their place of “habitual residence” is not condoned. They have inter-country liaison Judges. Since 2003 some 150 cases have been referred under the UK/Pakistan Protocol, and the principles have been broadly adhered to, though there has been some criticism.

### **Qatar:**

Recognise the importance of protecting families and children. NGO’s have been created to address family issues, and they would work in conjunction with the Family Courts.

### **Spain:**

A new network of 10 Judges has been introduced. Mediation is being developed.

### **Switzerland:**

They have bilateral agreements with Lebanon and Australia. They will ratify the 1996 Child Protection Convention soon. They are introducing new legislation to facilitate procedures and introduce mediation, though it will not be compulsory. Liaison Judges would not be possible within the Swiss system.

### **League of Arab States:**

They are doing a lot of work with regards to the harmonisation of family laws, especially around mixed marriages. Recognition of the rights of women is also being addressed.

### **UNCRC:**

Reminded attendees that they compile Reports and Progress Reports on all countries every 5 and 2 years, and this provides opportunities for a wide variety of interested parties to contribute. Some of this information can be extremely delicate and sensitive, particularly if it could be deemed “critical” or “unsupportive”. All were encouraged to consider doing this when appropriate.

## **TRANSFRONTIER CONTACT CONCERNING CHILDREN**

General Principles and Guide to Good Practice, Hague Conference on Private International Law

Published by Family Law and the HccH: ISBN 978-1-84661-141-4

The above guide was introduced at the Conference. It is intended for all interested States and parties, not just for the members of the Hague Conference.

It emphasises that common rules for deciding on jurisdiction are desperately needed.

It was acknowledged that the question of contact is generally more difficult and time-consuming than abduction. They are more likely to be more complex. There are usually significant financial costs when trans-frontier contact is frustrated – wasted visits, travel/hotel expenses etc. The structure for administrative co-operation is provided by the 1980 and 1996 Conventions.

The notion and use of “prevention of further harm” should be more widely implemented to help stabilise a child’s situation.

Contact in itself can be defined and originate in many different ways – by individual agreements between parents, by Courts or Judges, or any of the many other agencies that could be involved. Contact Orders or agreements can be extremely specific about the precise arrangements and responsibilities. It is possible for passports/travel documents to be withdrawn. Sureties/deposits are allowed to facilitate the process.

Any decisions or actions need to be enforceable in both/all countries involved. This is an area where liaison Judges and Central Authorities can be useful. In some countries “mirror orders” are/may be possible, and are an important and useful way of moving a difficult situation forward.

This is an important document and I would advise all countries to get a copy.

### **CONCLUSION:**

The Conference concluded with the attached Declaration being agreed. Mediation will be an area of significant growth as a means of resolving trans-frontier private law issues concerning children and families in the immediate future. The clause on mediation was agreed by the Conference has since been accepted by a meeting of the Council of General Affairs of the Hague Council on Private International Law which met at the Hague from the 31<sup>st</sup> March to 2<sup>nd</sup> April 2009.



