


The Malta Process, the Working Party on Mediation and the Malta IV Conference

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History of the Malta Process and Working Party on Mediation

Legal Diversity and International Law



- **Diversity of legal systems / traditions a reality: e.g. common law, civil law, Shari'a law, customary law**
- **Private International Law: respect and cooperation between diverse legal traditions**
- **Increasing dialogue among legal systems; building innovative solutions for international cooperation**

Legal Diversity and International Law



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MIXED LEGAL SYSTEMS

The term "mixed", which we have chosen over other terms such as "hybrid" or "composite", should not be construed restrictively, as certain authors have done. Thus this category includes political entities where two or more systems apply cumulatively or interactively, but also entities where there is a juxtaposition of systems as a result of more or less clearly defined fields of application.

MIXED SYSTEMS OF CIVIL LAW AND COMMON LAW

- 1 SOUTH AFRICA
- 1 BOTSWANA
- 1 CYPRUS
- 1 SCOTLAND (UK)
- 1 GUYANA
- 1 LOUISIANA (USA)
- 1 MALTA
- 1 MAURITIUS
- 1 NAMIBIA
- 1 PHILIPPINES
- 1 PORTO RICO (ASS. USA)
- 1 QUEBEC (CD)
- 1 SAINT LUCIA
- 1 SEYCHELLES

MIXED SYSTEMS OF CIVIL LAW AND CUSTOMARY LAW

- 1 BURKINA FASO
- 1 BURUNDI
- 1 CHAD
- 1 CHINA (CN) (minus H-K and MACAU)
- 1 CONGO
- 1 CONGO, DEMOCRATIC REPUBLIC OF
- 1 COTE D'IVOIRE
- 1 ETHIOPIA
- 1 EQUATORIAL GUINEA
- 1 GABON
- 1 GUINEA
- 1 GUINEA-BISSAU
- 1 JAPAN
- 1 KOREA SOUTH
- 1 KOREA NORTH
- 1 MADAGASCAR
- 1 MALI
- 1 MONGOLIA
- 1 MOZAMBIQUE
- 1 NIGER
- 1 RWANDA
- 1 SAO TOMÉ AND PRINCIPE
- 1 SENEGAL
- 1 SWAZILAND
- 1 TAIWAN
- 1 TOGO

MIXED SYSTEMS OF CIVIL LAW AND MUSLIM LAW

- 1 ALGERIA
- 1 COMOROS ISLANDS
- 1 EGYPT
- 1 IRAN
- 1 IRAQ
- 1 MAURITANIA
- 1 MOROCCO
- 1 PALESTINE
- 1 SYRIA

HCCH – “Malta Process”



- The Malta Process (est. 2004), developed within the framework of the HCCH, promotes co-operation with countries with legal systems based upon or influenced by Islamic (Shari’a) law, for the resolution of complex transfrontier family conflicts
- Notably issues of child protection / protection of contact rights between parents and children (1996 Convention), the collection of child support (2007 Convention), and issues of parental child abduction (1980 Convention)
- A complementary objective of the Malta Process is to seek broad application of important Hague Children’s Conventions by States whose legal systems are influenced by or based upon Shari’a law



Background - Findings

- **Review of bilateral arrangements between 9 States (between which the 1980 Hague Child Abduction Convention does not apply) in the context of cross-frontier child abduction and contact**
(Algeria, Australia, Belgium, Canada, Egypt, France, Lebanon, Morocco and Tunisia)
- **Successful arrangements promote and facilitate agreed solutions**
- **Effective legal structures within which agreements can be reached safely and fairly are lacking**
- **Search for common legal principles required for States that have not joined 1980 and 1996 Conventions**

States Involved 2004-2009



- **2004** - Algeria, Belgium, Egypt, France, Germany, Italy, Lebanon, Malta, Morocco, the Netherlands, Spain, Sweden, Tunisia and the United Kingdom
- **2006** - Algeria, *Australia*, Belgium, *Canada*, Egypt, France, Germany, *Indonesia*, Lebanon, *Libya*, *Malaysia*, Malta, Morocco, the Netherlands, Sweden, Tunisia, *Turkey*, the United Kingdom and the *United States of America*
- **2009** - 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 and the United States of America



The Malta Process

Exchange of views among judges and other experts to reach a common understanding of what is needed and feasible to resolve cross-border family disputes, to secure the child's right to have continuing contact with both parents and combat international child abduction:

- Full appreciation of how different legal systems address cross-frontier family problems
- Process in which principles emerge on the basis of consensus (“ownership”)
- Respect for the diversity of the different legal systems and their basic values
- Willingness to compromise in the pursuit of shared objectives – 1989 UNCRC



1989 UNCRC Principles

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:

- in all actions concerning children, the best interests of the child shall be a primary consideration;
- 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;
- a child should have the opportunity to learn to know and respect the culture and traditions of both parents;
- States are obliged to take measures to combat the illicit transfer and non-return of children abroad.

Approved Common Set of Principles

Malta Declaration 2004 & 2006



- Common rules which specify which country's courts or authorities are competent to make decisions concerning custody and contact
- Mutual recognition of decisions so made
- Efficient and properly resourced administrative authorities
- Mechanisms to promote agreement
- Mutual trust and confidence between the authorities in the different countries

Malta Declaration 2009



- Recommends continuing efforts to improve co-operation between judicial and administrative levels between States
- Encourages States in developing capacity / structures, including Central Authorities
- Recommends to States to give careful consideration to join the 1996 Hague Child Protection Convention and 1980 Hague Child Abduction Convention
- Reaffirms that mutual recognition of decisions based on common grounds of jurisdiction is ideal basis for international legal co-operation in child protection matters

Malta Declaration 2009 (Cont.)



- Highlights vital role of judicial / administrative authorities in assisting with locating the child
- Emphasizes the value of direct judicial communications
- Highlights value of training programs for judges and other professionals
- Recommends that authorities issuing visa should take welfare of children regarding contact to their parents in consideration
- Recommends establishment of Working Party on Mediation to promote structures and methods of mediation



Working Party on Mediation

- **Council on General Affairs and Policy 2009**
 - Mandate to establish Working Party on Mediation following recommendation in Third Malta Declaration
- **Objective:**
 - Promoting the development of mediation structures to help resolve cross-border disputes concerning custody of or contact with children
- **Establishment of Working Party in June 2009**
 - Consisting of experts designated by a small number of States & independent mediation experts
 - States invited to designate an expert:

Australia	France	Jordan	Pakistan
Canada	Germany	Malaysia	United Kingdom
Egypt	India	Morocco	USA

Malta Mediation Principles (WPM)



Advantages, limits, risks and safeguards of mediation in child abduction and contact cases

- All appropriate steps should be taken to encourage the parties to a cross-border family dispute concerning children to find an agreed solution to their dispute.
- Safeguards and guarantees should be put in place to prevent engagement in mediation from resulting in any disadvantage for either of the parties.

Malta Mediation Principles



A. Central Contact Point

- **Provide information (in official language & either English or French)**
 - About available family mediation services including, list of mediators/organisations; costs; mediation models used etc.
 - To assist with locating the other parent / the child
 - On where to obtain advice on family law and legal procedures
 - On how to give the mediated agreement binding effect
 - On the enforcement of the mediated agreement
 - About support to ensure the long-term viability of the agreement
- **Promote co-operation, training & exchange of best practices**
- **Gather & make publicly available information on cases dealt with by central contact points, actions taken and outcomes**

Requests should be processed expeditiously

Malta Mediation Principles



B. Mediation

- **Characteristics of mediators – inter alia:**
 - Suitable training in family mediation,
 - Knowledge/ understanding of relevant international, regional and national law
 - Significant experience with inter-cultural cross-border disputes
 - Language competency
- **Establishment of lists of mediator**
- **Safeguarding the quality of mediation** (voluntary, best interest of the child, neutrality, fairness, confidentiality, impartiality, informed decision making)

C. Rendering mediated agreements binding

- Where needed, countries should examine the desirability of introducing regulatory or legislative provisions for the enforcement of mediated agreements

Current Members of the WPM



- Australia
- Canada (Co-Chair)
- Egypt
- France
- Germany
- India
- Jordan
- Malaysia
- Morocco
- Pakistan (former co-Chair)
- Senegal
- South Africa
- United Kingdom
- United States of America

National Contact Points for Mediation



- Australia
- France
- Germany
- Hungary
- Netherlands
- Pakistan
- Russian Federation
- Slovak Republic
- United States of America



The 2016 Malta IV
Conference &
WPM 2017



Past Malta Conferences and Seminars



➤ **Malta I, II and III are building blocks**

➤ **Regional seminars: 2009-2016**

Qatar (June 2011 & March 2016), Tunisia (October 2013), Morocco and Tunisia (November 2014), Jordan (December 2015)

➤ **Work in the capitals**

➤ **Work by other Organisations**

(e.g., UNCRC, EU/Euromed, ISS, MiKK, Missing Children Europe, Reunite)

➤ **Use of Mediation: Working Party**

The Fourth Malta Conference: May 2016



Photo - DOI - Jeremy Wonnacott

Fourth Malta Conference: Outcomes



- **Valletta, Malta:** From 2 to 5 May 2016, more than 130 senior government officials, judges and other experts from 34 countries, including:
- Algeria, Australia, Bangladesh, Belgium, Canada, France, Germany, Indonesia, Iran, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Libya, Malaysia, Malta, Mauritania, Morocco, the Netherlands, Norway, Pakistan, Portugal, Saudi Arabia, Senegal, Singapore, Spain, Sweden, Switzerland, Tunisia, Turkey, the United Kingdom and the United States of America;
- from the Asian-African Legal Consultative Organization (AALCO), the United Nations Committee on the Rights of the Child, the European Union (the Commission, the Parliament and the Council), the Association of International Family Judges (AIFJ), the International Academy of Family Lawyers (IAFL), the International Social Service (ISS), MiKK, Missing Children Europe and Reunite;
- as well as from the Permanent Bureau of the Hague Conference on Private International Law (HCCH), met in Valletta, Malta, for the Fourth Malta Conference on cross-frontier child protection and family law (“Malta IV”) within the “**Malta Process**”.

Fourth Malta Conference: Outcomes



- Guided by the principles set out in the 1989 *United Nations Convention on the Rights of the Child*, and building on the Malta Declarations of **2004**, **2006** and **2009**, as well as on successful outcomes of regional seminars and bilateral meetings, the participants unanimously agreed upon Conclusions and Recommendations of the meeting.
- The experts recognised that the **1980 Child Abduction Convention**, the **1996 Child Protection Convention** and the **2007 Child Support Convention** support a number of key principles expressed in the **1989 *United Nations Convention on the Rights of the Child***, all in the best interests of children.

Fourth Malta Conference: Outcomes



- In the light of the hypothetical cases studied at the meeting, experts recognised the utility of finding solutions to the difficulties encountered in the area of international child protection, affecting the fundamental rights of children, through reinforced international co-operation and, in particular, through accession to or ratification of certain Hague Children's Conventions.
- The experts noted that these Hague Children's Conventions **are designed to be global in reach and to be compatible with diverse legal traditions**. Experts underlined the important benefits of the Hague Children's Conventions for States Parties.
- Iraq, Morocco and Pakistan now Party to several Hague Children's Conventions
- 65 States Parties (including Algeria, Israel, Morocco, Pakistan, Tunisia and Turkey) to the 1956 UN Maintenance Convention



Judicial Cooperation / Innovation

“All States are invited to designate a Network Judge. Participants in Malta IV whose country does not yet have a Network Judge are invited to inform the Permanent Bureau of appropriate authorities to contact in their States in order to effect a designation to the International Hague Network of Judges.”

IHNJ – States: 38 (2010) -> 81 (2017)

IHNJ – Judges: 56 (2010) -> 124 (2017)

Academic Study Commissioned



- Finds “(best) interests of child” principle across Shari’a schools
- Responds to hesitation of some re: 1980 Convention: “conflict over substantive law is more a ‘red-herring’... the conflict more perceived than real”
- “This report argues that the best chance of securing significant further accessions to the [1980 Convention] from Muslim majority States involves a narrowly tailored ‘conflicts of law’ rules that directs judges to resolve custody disputes with a ‘foreign element’ by reference to legislation that implements the [1980 & 1996 Conventions] in domestic law ”
- “[R]eal challenge... is not overcoming custodial rules themselves, but rather compensating for the absence in early Islamic legal history of a robust private international law doctrine”

(Anver Emon and Urfan Khaliq)

Malta IV Information on HCCH Website



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	Judicial and other conferences
Title	Fourth Malta Conference on Cross-Frontier Child Protection and Family Law
Year of publication	2016
Description (or download in PDF, if available)	<div style="display: flex; justify-content: space-between;"></div> <p style="text-align: center;">Fourth Malta Conference on Cross-Frontier Child Protection and Family Law ("Malta IV")</p> <p style="text-align: center;">News Item</p> <p style="text-align: center;">Conclusions and Recommendations (Arabic version, Portuguese version)</p> <p>The Hague Children's Conventions:</p> <ul style="list-style-type: none">• Outline of the 1980 Convention on Child Abduction (Arabic version)• Child Abduction Section• Outline of the 1996 Convention on the Protection of Children (Arabic version)• Protection of Children Section• Outline of the 2007 Convention on Child Support (Arabic version)• Child Support Section <p>Agenda: Malta IV Conference on Cross-Frontier Child Protection and Family Law</p> <p><i>Welcoming words</i></p> <ul style="list-style-type: none">• Dr. Michael Farrugia, Minister for the Family and Social Solidarity of Malta• Dr. Owen Bonnici, Minister of Justice, Culture and Local Government of Malta• Justice Robert Mangion, Hague Network Judge, Malta• Mr Christophe Bernasconi, Secretary General of the Hague Conference on Private International Law (HCCH) <p><i>Presentations of Conference Speakers</i></p>

Conclusions and Recommendations in Arabic



1

مؤتمر مالطا الرابع حول حماية الأطفال عبر الحدودية وقانون الأسرة باستضافة الحكومة المالطية وبالتعاون مع مؤتمر لاهاي للقانون الدولي الخاص "عملية مالطا"

إعلان

اجتمع خلال الفترة الواقعة من 2 إلى 5 مايو (أيار) 2016، في فاليتا بمالطا، أكثر من 130 شخص من كبار المسؤولين الحكوميين، والقضاة والخبراء من 34 دولة وهي إسبانيا، أستراليا، ألمانيا، الأردن، أندونيسيا، إيران، إسرائيل، إيطاليا، بنغلادش، البرتغال، باكستان، بلجيكا، تونس، تركيا، الجزائر، السعودية، السنغال، سنغافورة، السويد، سويسرا، فرنسا، كندا، كينيا، لبنان، ليبيا، ماليزيا، موريتانيا، مالطا، المغرب، المملكة المتحدة، النرويج، هولندا، الولايات المتحدة الأمريكية، اليابان، بالإضافة إلى ممثلين من المنظمة الأفرو-آسيوية للإستشارات القانونية (AALCO)، ولجنة الأمم المتحدة المعنية بحقوق الطفل، والاتحاد الأوروبي (المفوضية والبرلمان والمجلس)، وجمعية القضاة الدوليين لشؤون الأسرة (AIFJ)، والأكاديمية الدولية للمحامين المعنيين بشؤون الأسرة (IAFL)، ومنظمة الخدمة الاجتماعية الدولية (ISS)، ومنظمة MIKK (الوساطة في النزاعات الدولية التي تشمل الأهالي والأطفال)، ومنظمة الأطفال المفقودين في أوروبا ومؤسسة لم الشمل (Reunite) الخاصة بقضايا اختطاف الأطفال، بالإضافة إلى ممثلين من مؤتمر لاهاي للقانون الدولي الخاص، وذلك في مؤتمر مالطا الرابع حول حماية الأطفال عبر الحدود وقانون الأسرة.

هذا وقد تقدم الخبراء بشكرهم للحكومة المالطية على حفاوة الضيافة ودعماها الكريم لمؤتمر مالطا الرابع، كما عبّروا عن تقديرهم للعديد من الدول التي قدمت موارد إضافية للمؤتمر، وهي ألمانيا، وسويسرا، وفرنسا، وكندا، والمملكة المتحدة، والنرويج، والنمسا، وهولندا، والولايات المتحدة الأمريكية.

رغب الخبراء المشاركون بالتطور الجديد منذ مؤتمر مالطا الثالث والمتمثل باتضمام المغرب والعراق إلى اتفاقية عام 1980 بشأن اختطاف الأطفال¹، وأشاروا برضا إلى وجود أعداد متزايدة من الدول التي انضمت لاتفاقية عام 1980، بالإضافة إلى اتفاقية عام 1996 بشأن حماية الطفل²، واتفاقية عام 2007 بشأن دعم الطفل³.

* يرجى الملاحظة أن هذه الترجمة العربية هي ترجمة تقريبية فقط ولا يجب اعتبارها نسخة رسمية من الوثيقة.

¹ اتفاقية لاهاي المؤرخة 25 أكتوبر 1980 حول الجوانب المدنية المتعلقة بالاختطاف الدولي للأطفال.

² اتفاقية لاهاي المؤرخة 19 أكتوبر 1996 المتعلقة بالاختصاص، والقانون المطبق، والاعتراف، والتفويض، والتعاون في ميدان المسؤولية الأبوية وقضايا حماية الأطفال.

Draft Strategic Plan WPM 2017-2018



- Invite new members to expand the Working Party and invite a new co-Chair (non-Contracting State)
- Participation in the 7th Special Commission on the 1980 & 1996 Conventions as Observers
- Hold a Regional Meeting of the WPM Asia-Pacific or Gulf region
- Share information on international family mediation resources and training opportunities (central web portal)

New Invited Members of the WPM



- Bahrain
- Indonesia
- Iran
- Japan
- Lebanon
- Oman
- Qatar
- Saudi Arabia
- UAE

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Case Example

- Ali and Amina are nationals of Country B. They have been married since 2005 and have a son Azzam, born in 2008. The family has always lived in Country B. Occasionally Amina visits her relatives who live in Country H.
- Unfortunately, their relationship has started to deteriorate. Amina wants to visit her relatives in Country H and, this time, she wishes to take Azzam so that her relatives can meet him. All the arrangements are made to allow Amina to take Azzam to Country H and return two months later.
- While in Country H, one of Amina's relatives, who has kept in touch with childhood friends in Country B, informs her that he heard a rumour that Ali intends to ask the courts in Country B for full custody of Azzam upon their return. Amina is very concerned and despite the agreement, decides to stay in Country H and not return with Azzam.
- Ali tries to convince Amina to return with Azzam or, if she does not wish to return, to return Azzam to Country B. Amina refuses to return to Country B and will not send their son either. She insists that Azzam is still very young and needs his mother; she also claims that separating Azzam from her would be detrimental to him given his young age and stage of development.
- Amina seizes the courts in Country H and obtains an interim custody order in her favour. At the same time, Ali seizes the courts in Country B and obtains an order from the court which grants him full custody of Azzam, principally on the basis that at the age of 8 years, a boy should be placed in the custody of his father. Azzam misses his father and would very much like to see him. However, he does not want to leave his mother.
- Ali seeks enforcement of the custody order in Country H.