

22 March 2006

**Concluding address by the deputy Prime Minister and Minister for Justice and Home Affairs the Hon Tonio Borg at the Second Maltese Judicial Conference on Cross-Frontier Law Issues**

Mr Secretary – General,  
Honorable Members of the Judicates,  
Distinguished guests and speakers,  
Ladies and Gentlemen,

At the end of this second Maltese Judicial Conference on Cross-Frontier Family Law issues, I would like to thank you for organizing this conference on our island. We are proud to contribute towards the development of a fascinating topic which lies in the realm of an even more interesting subject.

In my student days, I remember the dread and anxiety which private international law aroused amongst us students. The very title is confusing: is this kind of law private and if it is, how can it be international? I distinctly remember foundering, as a first-year law student on the deceptively simple question: namely is private international law part of private or public law?

Indeed the Hague Conference is evidence and proof in itself that though the rules of conflict of laws remain within the purview of the

private law system of each state, there is a need – now more than ever – to develop and harmonise these rules amongst states on the international plane. In so doing we would be creating a system which is more just, which does not harmonise substantive law, which does not interfere with local traditions about law, state and family, but which harmonises the rules applicable whenever there is a conflict of laws, (a term which I personally prefer to the other term “private international law”), particularly in issues relating to family law.

In this regard, I am happy to note that in the past few years the Conference has welcomed 12 new Member States (an increase of 25%) including the Russian Federation, and that 112 states all over the world are parties to one or more of the 34 Hague Conventions

Family law issues arouse strong sentiments and feelings. The law of persons – unlike the law on things or obligations – deals directly with personal issues: child custody, the setting up of the matrimonial home, the right to alimony, issues relating to the upbringing of children, other issues such as permissions for children to travel with a separated parent, divorce, separation and annulment. To make matter worse these are issues which in substance are regulated so diverse by different legal systems, depending on the different cultures and traditions.

The Hague Conference should strive to fine-tune the existing international rules on conflict of laws in such area, without attempting at interfering into the substantive notices on family law. In this regard

one may recall that it is already difficult to do so within the European Union – an organisation of states covered by a tight legal network – let alone a global organisation like the Hague Conference.

Malta looks forward, without prejudice to its obligations as an European Union state, to help in this process. In this respect the clear mission statement of the Hague Conference to be a forum for the Member States for the development and implementation of common rules of private international law in order to co-ordinate the relationship between different private law systems in international situations – as has happened here in Malta – should remain the guiding light for the future activities of the Conference, namely building bridges between different legal systems, common law and civil law systems.

In this respect, it should be noted that at the Justice and Home Affairs Council of Ministers of the European Union, we are dedicating an increased amount of time to private international law issues. The ones relating to the recognition of matrimonial law judgments has already been approved, including questions relating to matrimonial property; besides the rules relating to the proper law of contract through the Rome Conventions have harmonised such rules within the Union; right now the Maltese House of Representatives is in the final stages of adopting these rules in our legal system. As you may know, the JHA Council is also issuing draft EU legislation relating to the proper law of tort.

In your deliberations in the past two days, you have debated such heart - rending cases as the ones illustrated in the hypothetical cases. Most cases of these kind are very real indeed. They cause suffering and anxiety, and in most cases the innocent child, who is supposed to be the **subject**, becomes the **object** of litigation, and in the hazy clouds of legal arguments, there is a tendency to lose sight of the best interests of the child; which is why the Malta Declaration of March 2004 was emphatic in this regard. The idea being proposed in the Information Note circulated by the Deputy Secretary General to establish a Central Authority as a focal point for Inter-State co-operation might alleviate some of this suffering, and should be actively supported.

Finally, Mr Secretary-General, I hope that in the years to come you shall look back towards the days you spent in Malta as the seed for development and growth in increased co-operation on family issues amongst different legal systems. Whatever our legal systems or traditions, our religious beliefs or lack of them, all these shrink into insignificance before the best interests of the child principle. Translating this absolute principle into practice is a tough, but by no means impossible, job entrusted to us states under the guidance of the Hague Conference.