

Nagħti l-kunsens tiegħi.

(L.S.)

GEORGE ABELA  
President

14 ta' Diċembru, 2010

**ATT Nru. XXI tal-2010**

*ATT biex Malta tirratifika l-Konvenzjoni ta' l-Aja dwar il-gurisdizzjoni, il-liġi applikabbli, ir-rikonossiment, l-infurzar u l-kooperazzjoni fir-rigward tar-responsabbiltà tal-ġenituri u l-miżuri għall-ħarsien tat-tfal, magħmula fid-19 ta' Ottubru 1996.*

IL-PRESIDENT bil-parir u l-kunsens tal-Kamra tad-Deputati, imlaqqgħa f'dan il-Parlament, u bl-awtorità ta' l-istess, hareġ b'liġi dan li ġejj:-

**1.** It-titolu fil-qosor ta' dan l-Att hu l-Att tal-2010 dwar il-Harsien tat-Tfal (Konvenzjoni ta' l-Aja). Titolu fil-qosor.

**2.** F'dan l-Att, kemm-il darba r-rabta tal-kliem ma tkunx Tifsir. teħtieġ xort'oħra -

"awtorità ċentrali" tfisser l-Awtorità maħtura taħt l-artikolu 6;

"Konvenzjoni" tfisser the Konvenzjoni dwar il-Ġurisdizzjoni, il-Liġi Applikabbli, ir-Rikonossiment, l-Infurzar u l-Kooperazzjoni fir-rigward tar-Responsabbiltà tal-Ġenituri u l-Miżuri għall-Ħarsien tat-Tfal, magħmula fid-19 ta' Ottubru 1996 fi hdan il-Konferenza ta' l-Aja fuq id-Dritt Internazzjonali Privat, li għandha t-test tagħha mnizzel fl-Ewwel Skeda;

"Malta" għandha l-istess tifsira mogħtija lilha bl-artikolu 124 tal-Kostituzzjoni;

"il-Ministru" tfisser il-Ministru responsabbli għall-gustizzja;

"mizura" tfisser sentenza jew deċiżjoni li ssir kif hemm fil-Kapitolu II tal-Konvenzjoni, u referenzi għat-teħid ta' mizura għandhom jiftiehm bħala referenzi għall-għemil ta' dik is-sentenza jew deċiżjoni;

"ordnat" tfisser ordnat b'regolamenti magħmulin mill-Ministru taħt dan l-Att;

"sentenza" tfisser sentenza jew ordni li jkunu intiżi għall-harsien tal-persuna jew tal-proprjetà ta' tifel and li jingħataw jew minn qorti fl-Istat jew minn awtorità kompetenti għudizzjarja jew amministrattiva ta' Stat Kontraenti ieħor;

"Stat Kontraenti" tfisser dawk l-Istati, li mhumiex Malta, li jistgħu minn żmien għal żmien jiġu speċifikati mill-Ministru b'ordni magħmul taħt l-artikolu 4;

"Stat Mhux Kontraenti" tfisser Stat li ma jkunx Stat Kontraenti;

"tifel" tfisser persuna taħt l-età ta' tmintax il-sena.

Ratifika tal-Konvenzjoni.

**3.** Bis-saħħa ta' dan l-Att, il-Gvern ta' Malta qiegħed b'dan jiġi awtorizzat jirratifika l-Konvenzjoni.

Stati Kontraenti.

**4.** (1) Il-Ministru jista', b'ordni fil-Gazzetta, minn żmien għal żmien jispeċifika l-Istati Kontraenti, li mhumiex Malta, għall-finijiet tal-Konvenzjoni.

(2) Dak l-ordni għandu jkun jispeċifika d-data tad-dhul fis-seħħ tal-Konvenzjoni, kif ikun japplika bejn Malta u Stat speċifikat fl-ordni.

(3) Meta l-Konvenzjoni tkun tapplika, jew tkun tapplika biss, għal xi territorju speċifikat jew għal territorji partikolari speċifikati f'dikjarazzjoni li ssir minn Stat Kontraenti, referenza għal dak l-Istat fis-subartikoli (1) u (2) għandha tiftiehem bħala referenza għal dak it-territorju jew dawk it-territorji taħt l-artikolu 59 tal-Konvenzjoni.

Applikabilità.

**5.** Bla hsara għad-dispożizzjonijiet ta' dan l-Att, id-dispożizzjonijiet tal-Konvenzjoni għandhom isehhu bħala liġi f'Malta.

Awtorità ċentrali.

**6.** Il-funzjonijiet ta' awtorità ċentrali taħt il-Konvenzjoni għandhom jitwettqu mid-Direttur responsabbli għall-*Welfare*.

Gurisdizzjoni.

**7.** (1) Referenzi fil-Konvenzjoni għal awtoritajiet jew awtorità, ikunu kif ikunu dawn kwalifikati, għandhom jiftiehm, meta

dawn ikunu jinsabu -

(a) fil-Kapitolu II tal-Konvenzjoni, bhala li jinkludu referenzi għall-qorti adatta,

(b) fl-Artikoli 24, 25 u 28, bhala referenzi għall-Qorti tal-Appell,

(c) fl-Artikoli 32, 33, 34, 35(1), 36 u 37, bhala li jinkludu referenzi għall-qorti adatta, u

(d) fl-Artikolu 35(2), bhala li jinkludu referenza għall-Qorti Ċivili (Sezzjoni tal-Familja).

(2) Meta jsiru xi proċedimenti taħt il-Kapitolu IV tal-Konvenzjoni għar-rikonoxximent, infurzar jew nuqqas ta' rikonoxximent ta' miżura meħuda f'xi Stat Kontraenti ieħor, il-Qorti tal-Appell konformement ma' dak il-Kapitolu u bla ħsara għas-subartikolu (5) ta' dan l-artikolu, jekk dan ikun japplika -

(a) jekk it-talba tkun għar-rikonoxximent jew l-infurzar tal-miżura, tordna jew -

(i) li l-miżura tkun rikonoxxuta jew infurzata għalkollox jew biss f'parti, bla ħsara għal kull modifika jew adattament meħtieġa, jew

(ii) li t-talba tiġi miċhuda, jew

(b) jekk it-talba tkun għan-nuqqas ta' rikonoxximent tal-miżura, tordna jew -

(i) li l-miżura ma tkunx rikonoxxuta, jew

(ii) li din tiġi rikonoxxuta jew infurzata għalkollox jew biss f'parti, bla ħsara għal kull modifika jew adattament meħtieġa.

(3) Meta tkun qegħda tinstema' talba taħt l-Artikolu 35(2) tal-Konvenzjoni minn ġenitur li jkun joqgħod fl-Istat li jkun qed ifittex li jikseb jew ikollu aċċess għat-tifel tiegħu jew tagħha (li jkun tifel li ma jkunx soltu joqgħod f'dak l-Istat), il-Qorti Ċivili (Sezzjoni tal-Familja) għandha toħroġ ordni fejn tiddikjara jew -

(a) li fil-fehma tagħha l-persuna tkun adatta biex ikollha aċċess għat-tifel (u f'dak il-każ il-Qorti tista', meta jkun adatt, tispeċifika l-kondizzjonijiet li l-aċċess għandu jinghata taħthom), jew

(b) li l-persuna ma tkunx adatta biex ikollha aċċess għat-tifel.

(4) Jekk, konformement mal-Artikolu 55(1)(a) tal-Konvenzjoni, l-Istat ikun irriserva l-ġurisdizzjoni tal-awtoritajiet tiegħu biex jieħdu miżuri intiżi għall-ħarsien ta' proprjetà (jew ta' ċertu kategoriji ta' proprjetà) ta' tifel li jkun qiegħed fit-territorju tiegħu f'kazijiet meta dawk l-awtoritajiet kieku ma jkollhomx ġurisdizzjoni taħt il-Konvenzjoni, għaldaqstant, sakemm ma tkunx giet irtirata dik ir-riżerva, il-qrati adatti għandhom f'dawk il-kazijiet ikollhom il-ġurisdizzjoni hekk riżervata.

(5) Jekk, konformement mal-Artikolu 55(1)(b) tal-Konvenzjoni, l-Istat ikun irriżerva d-dritt li ma jirrikonoxxi ebda responsabbiltà tal-ġenituri jew miżura sakemm din tkun inkompatibbli ma' xi miżura meħuda mill-awtoritajiet tiegħu dwar xi proprjetà bħal dik jew kategoriji ta' proprjetà bħal dawk imsemmija fis-subartikolu (4), għaldaqstant, sakemm ma tkunx giet irtirata dik ir-riżerva, il-Prim'Awla tal-Qorti Ċivili tista' tiċhad ir-rikonoxximent ta' responsabbiltà tal-ġenituri jew ta' miżura bħal dawk sakemm din tkun hekk inkompatibbli.

Registrazzjoni ta' deċiżjonijiet.

**8.** (1) Għall-finijiet tal-Artikoli 24, 25 u 28 tal-Konvenzjoni, kull persuna li jkollha interess tista' tipprezenta rikors fir-reġistru tal-Qorti tal-Appell għar-rikonoxximent jew nuqqas ta' rikonoxximent ta' deċiżjoni jew miżura meħuda fi Stat Kontraenti ieħor.

(2) Għall-finijiet tal-Artikolu 35(2) tal-Konvenzjoni, ġenitur jista' jipprezenta rikors fir-reġistru tal-Qorti Ċivili (Sezzjoni tal-Familja) biex jikseb jew jibqa' jkollu aċċess għat-tifel tiegħu jew tagħha meta dan ikun tifel li ma jkunx soltu joqghod f'dak l-Istat.

Appelli. Kap. 12.

**9.** Id-dispożizzjonijiet tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili li jirrigwardaw appelli minn deċiżjonijiet tal-Qorti Ċivili (Sezzjoni tal-Familja) għandhom ikunu japplikaw għal dawn id-deċiżjonijiet.

Prova dwar dokumenti u xieħda.

**10.** (1) Kull dokument li jitqies li jkun dokument mgħoddi jew kunsinnat taħt il-Konvenzjoni jista' jintlaqa' b'xieħda li jkun dokument ta' dik ix-xorta u b'xieħda ta' kull haġa li jkun jittratta dwarha, bla ħsara għal fatt li dan ikun kopja awtentikata kif imiss ta' xi deċiżjoni, ordni jew miżura; u dokument li jitqies li jkun kopja kif imsemmi għandu jitqies bħala vera kopja kemm-il darba ma jiġix ippruvat il-kuntrarju.

(2) Għall-finijiet tas-subartikolu (1), kopja tkun awtentikata kif imiss jekk din ikollha timbru li jkun juri dan, jew tkun iffirmata

minn imhalef jew minn uffiċjal tal-imsemmija Awtorità.

(3) Għall-finijiet tal-Konvenzjoni, kopja ċertifikata ta' dokument bħal dak, għandu jkun xiehda bizzejjed ta' kull ma jiġi dikjarat f'dak id-dokument.

**11.** Il-Qorti tista', sew direttament sew bl-ghajnuna tal-awtorità ċentrali, tindirizza t-talbiet li jsiru għall-finijiet tal-Artikoli 8 jew 9 tal-Konvenzjoni, lill-awtorità adatta fi Stat Kontraenti ieħor. Talbiet.

**12.** Meta l-awtorità ċentrali tintalab tipprovdi informazzjoni li jkollha x'taqsam ma' tifel taħt l-Artikoli 31, 32 jew 34 tal-Konvenzjoni, hija tista': Rapporti.

(a) titlob lil xi persuna tagħmlilha rapport bil-miktub dwar kull haġa li tidhirlu li tkun relevanti;

(b) titlob lil xi qorti li jkun sarilha rapport bil-miktub dwar it-tifel tibgħatilha kopja tar-rapport,

u dik it-talba għandha tiġi mwettqa kif imiss.

**13.** (1) Il-Bord tar-Regoli tal-Qrati mwaqqaf taħt artikolu 29 tal-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili jista' jipprovdi biex jagħti seħħ lil dan l-Att hekk kif ikun jidher lil dak il-Bord li jkun meħtieġ jew spedjenti. Regoli tal-Qorti.  
Kap. 12.

(2) Mingħajr preġudizzju għall-generalità tas-subartikolu (1), regoli tal-qrati jistgħu jipprovdu -

(a) dwar il-proċedura fuq ir-rikorsi li jsiru fil-qorti taħt xi dispożizzjoni ta' dan l-Att u dwar id-dokumenti u l-informazzjoni li jkollha tingħata;

(b) dwar l-ghoti ta' ordnijiet li jkunu jeħtieġu l-iżvelar ta' informazzjoni fuq xi tifel li jkun is-sugġett ta' proċedimenti taħt dan l-Att u biex jiġi protett il-benesseri tiegħu.

(3) Il-Ministru responsabbli għall-gustizzja jista' jagħmel regolamenti taħt dan is-subartikolu li bihom jistabbilixxi d-drittijiet li għandhom jithallsu fir-registru tal-qrati għall-preżentata ta' atti gudizzjarji li jkollhom x'jaqsmu ma' xi proċedura taħt dan l-Att:

Izda sakemm jiġu hekk stabbiliti dawk id-drittijiet mill-Ministru, għandhom ikunu japplikaw id-drittijiet li hemm fil-Kodiċi ta' Organizzazzjoni u Proċedura Ċivili.

**14.** Il-Ministru jista' jagħmel regolamenti li jkunu jipprovdu dwar kull haġa li bis-saħħa ta' dan l-Att tkun meħtieġa li tiġi ordnata Regolamenti.

jew li tista' tigi ordnata u b'mod ġenerali għat-twettiq tad-dispożizzjonijiet ta' dan l-Att u sabiex issir kull haġa li tista' ssir għall-finijiet li jiġu sodisfatti l-obbligi li Malta għandha taħt il-Konvenzjoni.

Kunflitt bejn it-testi.

**15.** Fl-Iskeda li tinsab ma' dan l-Att, jekk ikun hemm xi kunflitt bejn it-test Ingliz u dak Malti, ikun it-test Ingliz li jipprevali.

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## SKEDA

(Artikolu 2)

### KONVENZJONI FUQ IL-ĠURISDIZZJONI, IL-LIĠI APPLIKABBLI, RIKONOXXIMENT, INFURZAR U KOOPERAZZJONI DWAR IR- RESPONSABILITÀ TAL-ĠENITURI U MIŻURI GHALL-PROTEZZJONI TAT- TFAL

*(Magħmul fid- 19 ta' Ottubru 1996)*

L-Istati firmatarji għal din il-Konvenzjoni,

Waqt li kkunsidraw il-bżonn li tittejjeb il-protezzjoni tat-tfal f'sitwazzjonijiet internazzjonali,

Waqt li jixtiequ jevitaw kunflitti dwar il-ġurisdizzjoni bejn is-sistemi legali tagħhom, il-liġi applikabbli, rikonoxximent u nfurzar ta' miżuri għall-protezzjoni tat-tfal,

Waqt li jiftakkru l-importanza ta' koperazzjoni internazzjonali għall-protezzjoni tat-tfal,

Waqt li jikkonfermaw li l-aħjar interessi tat-tifel għandhom ikunu konsiderazzjoni ewlenija,

Waqt li jinnutaw li l-Konvenzjoni tal-5 ta' Ottubru 1961 dwar il-poteri ta' awtoritajiet u l-liġi applikabbli fir-rigward għall-protezzjoni ta' minuri għandha bżonn tiġi riveduta,

Waqt li jixtiequ jistabbilixxu dispozizzjonijiet komuni għal dan il-għan, b'konsiderazzjoni mogħtija lill-Konvenzjoni tal-Ġnus Maqgħuda fuq id-Drittijiet tat-Tfal tal- 20 ta' Novembru 1989,

Ftehm u dwar id-dispożizzjonijiet li ġejjin:

#### KAPITOLU I - L-ISKOP TAL-KONVENZJONI

##### Artikolu 1

(1) L-għanijiet ta' din il-Konvenzjoni huma -

(a) li tistabbilixxi l-Istat li l-awtoritajiet tiegħu għandhom ġurisdizzjoni biex jieħdu miżuri diretti lejn il-protezzjoni tal-persuna jew tal-proprietà tat-tifel;

(b) li tistabbilixxi liema liġi għandha tiġi applikata minn dawn l-awtoritajiet fl-eżerċizzju tal-ġurisdizzjoni tagħhom;

(c) li tistabbilixxi l-ligi applikabbli għar-reponsabbiltà tal-ġenituri;

(d) li tipprovdi għar-rikonoxximent u l-infurzar ta' dawn il-miżuri ta' protezzjoni fl-Istati Kontraenti kollha;

(e) li tistabbilixxi l-kooperazzjoni kif tista' tkun meħtieġa bejn l-awtoritajiet tal-Istati Kontraenti sabiex jiġu miksubin l-iskopijiet ta' din il-Konvenzjoni.

(2) Għall-iskopijiet ta' din il-Konvenzjoni, il-kliem "reponsabbiltà tal-ġenituri" jinkludu s-setgħa tal-ġenituri, jew kwalunkwe relazzjoni ta' awtorità analoga li tistabbilixxi d-drittijiet, setgħat u responsabilitajiet ta' ġenituri, gwardjani jew rappreżentanti legali oħra fir-rigward tal-persuna jew il-proprjetà tat-tifel.

## Artikolu 2

Il-Konvenzjoni tapplika għat-tfal mit-twelid tagħhom sakemm jilhq u l-età ta' 18-il sena.

## Artikolu 3

Il-miżuri msemmija fl-Artikolu 1 jistgħu jkollhom x'jaqsmu partikolarment ma'-

(a) l-attribuzzjoni, eżerċizzju, terminazzjoni jew restrizzjoni ta' reponsabbiltà tal-ġenituri, kif ukoll mad-delega tiegħu;

(b) drittijiet ta' kustodja, inkluzi drittijiet dwar il-kura tal-persuna tat-tifel u, partikolarment, id-dritt li tistabbilixxi l-post tar-residenza tat-tifel, kif ukoll id-drittijiet ta' aċċess inkluz id-dritt li tiegħu tifel għal perjodu limitat f'post minbarra dak li jikkostitwixxi r-residenza abitwali tat-tifel;

(c) tutela, kurazija u istituzzjonijiet simili;

(d) in-nomina u funzjonijiet ta' kwalunkwe persuna jew korp li hija responsabbli għall-persuna jew proprjetà tat-tifel, li tirrappreżenta jew tassisti lit-tifel;

(e) it-tqegħid tat-tifel go familja *foster* jew f'kura istituzzjonali, jew l-provdiment ta' kura minn "kafala" jew istituzzjoni simili;

(f) is-supervizzjoni minn awtorità pubblika tal-kura ta' tifel minn kwalunkwe persuna li hija responsabbli għat-tifel;

(g) l-amministrazzjoni, konservazzjoni jew aljenazzjoni tal-proprjetà tat-tifel.

#### Artikolu 4

Il-Konvenzjoni ma tapplikax għal:

- (a) stabbiliment jew kontestazzjoni ta' relazzjoni bejn ġenitur u tifel;
- (b) deċiżjonijiet fuq l-adozzjoni, miżuri preparatorji għall-adozzjoni, jew l-annullament jew revoka ta' adozzjoni;
- (ċ) l-isem tat-tifel;
- (d) emanċipazzjoni;
- (e) obbligi ta' manteniment;
- (f) *trusts* jew suċċessjoni;
- (g) sigurtà soċjali;
- (h) miżuri pubbliċi ta' natura ġenerali f'materji ta' edukazzjoni jew saħħa;
- (i) miżuri li jirriżultaw minn offiżi penali mwettqin mit-tfal;
- (j) deċiżjonijiet fuq id-dritt tal-ażil u fuq l-immigrazzjoni.

### KAPITOLU II - ĠURISDIZZJONI

#### Artikolu 5

(1) L-awtoritajiet ġudizzjarji jew amministrattivi tal-Istat Kontraenti tar-residenza abitwali tat-tifel għandhom ġurisdizzjoni li jieħdu miżuri bil-għan li jipproteġu l-persuna jew il-proprjetà tat-tifel.

(2) Bla ħsara għall-Artikolu 7, f'każ ta' tibdil fir-residenza abitwali tat-tifel għal Stat Kontraenti ieħor, l-awtoritajiet tal-Istat tar-residenza abitwali l-ġdida għandhom ġurisdizzjoni.

#### Artikolu 6

(1) Għat-tfal refugjati u tfal li, minhabba f'inkwiet fil-pajjiż tagħhom, huma internazzjonalment spostati, l-awtoritajiet tal-Istat Kontraenti li fuq it-territorju tagħhom dawn it-tfal huma preżenti bħala riżultat tal-ispostament tagħhom, għandhom il-ġurisdizzjoni prevista fl-Artikolu 5(1).

(2) Id-dispożizzjonijiet tal-paragrafu ta' qabel dan japplikaw ukoll għal tfal li r-residneza abitwali tagħhom ma tistax tiġi stabbilita.

## Artikolu 7

(1) F'każ ta' tneħħija ingusta jew żamma tat-tifel, l-awtoritajiet tal-Istat Kontraenti li fih it-tifel kien abitwalment jkun residenti immedjatament qabel it-tneħħija jew żamma, jzommu l-ġurisdizzjoni tagħhom sakemm it-tifel ikun akkwista residenza abitwali fi Stat ieħor, u

(a) kull persuna, istituzzjoni jew korp ieħor li għandu drittijiet ta' kustodja taw il-kunsens tagħhom għat-tneħħija jew żamma; jew

(b) it-tifel għex f'dak l-Istat ieħor għal perjodu ta' mill-inqas sena wara li l-persuna, istituzzjoni jew korp ieħor li għandu drittijiet ta' kustodja għandu jew missu kellu għarfien ta' fejn hu t-tifel, l-ebda talba għar-ritorn li giet magħmula f'dak il-perjodu għadha pendenti, u t-tifel qed jgħix hajja stabbli fl-ambjent gdid tiegħu jew tagħha.

(2) It-tneħħija jew iż-żamma ta' tifel għandha tiġi kkunsidrata ingusta fejn -

(a) tikser id-drittijiet ta' kustodja attribwiti lil persuna, istituzzjoni jew korp ieħor, jew konguntament jew waħedha, taħt il-liġi tal-Istat fejn it-tifel kellu r-residenza abitwali immedjament qabel it-tneħħija jew żamma; u

(b) fi żmien tat-tneħħija jew żamma dawk id-drittijiet kienu fil-fatt eżerċitati, jew konguntament jew waħedhom, jew kienu jkunu eżerċitati jekk mhux għat-tneħħija jew żamma.

Id-drittijiet ta' kustodja msemmija hawn fuq fis-subagrafu (a), jistgħu jqumu partikolarment b'operazzjoni tal-liġi jew minhabba f'deċiżjoni ġudizzjarja jew amministrattiva, jew minhabba ftehim li għandu effetti legali taħt il-liġi ta' dak l-Istat.

(3) Sakemm l-awtoritajiet l-ewwel imsemmija fil-paragrafu (1) iżommu l-ġurisdizzjoni tagħhom, l-awtoritajiet tal-Istati Kontraenti li fihom it-tifel kien spostat jew li fihom hu jew hi kien mizmum jistgħu jieħdu biss dawk il-mizuri urġenti taħt l-Artikolu 11 kif huma neċessarji għall-protezzjoni tal-persuna jew il-proprietà tat-tifel.

## Artikolu 8

(1) Bħala eċċezzjoni, l-awtorità ta' Stat Kontraenti li għandha ġurisdizzjoni taħt l-Artikolu 5 jew l-Artikolu 6, jekk tikkunsidra li l-awtorità ta' Stat Kontraenti ieħor kienet tkun, fil-każ partikolari, aħjar biex tagħmel valutazzjoni tal-aħjar interessi tat-tifel, tista' jew:

- titlob dik l-awtorità l-oħra, direttament jew bl-assistenza tal-awtorità ċentrali tal-Istat tagħha, tassumi l-ġurisdizzjoni sabiex tiegħu dawk il-mizuri ta' protezzjoni li tikkunsidra li huma neċessarji, jew

- tissospendi l-konsiderazzjoni tal-każ u tistieden il-partijiet biex jintroduċu din it-talba quddiem l-awtorità ta' dak l-Istat ieħor.

(2) L-Istati Kontraenti li l-awtoritajiet tagħhom jistgħu jiġu indirizzati kif previst fil-paragrafu ta' qabel dan huma:

(a) Stat li tiegħu t-tifel huwa ċittadin;

(b) Stat li fih tinstab proprjetà tat-tifel;

(c) Stat li l-awtoritajiet tiegħu għandhom applikazzjoni għad-divorzju jew separazzjoni legali tal-ġenituri tat-tifel, jew għall-annullament taż-żwieġ tagħhom;

(d) Stat li miegħu t-tifel għandu konnessjoni sostanzjali.

(3) L-awtoritajiet involuti jistgħu jipproċedu għal skambju ta' fehmiet.

(4) L-awtorità indirizzata kif previst fil-paragrafu (1) tista' tassumi ġurisdizzjoni, fil-post tal-awtorità li għandha ġurisdizzjoni taħt l-Artikolu 5 jew l-Artikolu 6, jekk tikkunsidra li dan huwa fl-aqwa interessi tat-tifel.

#### Artikolu 9

(1) Jekk l-awtoritajiet ta' Stat Kontraenti msemmin fl-Artikolu 8(2) jikkunsidraw li fil-każ partikolari huma f'pożizzjoni aħjar sabiex jagħmlu valutazzjoni tal-aħjar interessi tat-tifel, jistgħu jew:

- jitlobu lill-awtorità kompetenti tal-Istat Kontraenti tar-residenza abitwali tat-tifel, direttament jew bl-assistenza ta' l-awtorità ċentrali ta' dak l-Istat, li jkunu awtorizzati biex jeżerċitaw ġurisdizzjoni biex jieħdu l-miżuri ta' protezzjoni li jikkunsidraw neċessarji, jew

- jistiednu l-partijiet sabiex jintroduċu din it-talba quddiem l-awtorità tal-Istat Kontraenti tar-residenza abitwali tat-tifel.

(2) L-awtoritajiet involuti jistgħu jipproċedu għal skambju ta' fehmiet.

(3) L-awtorità li tibda t-talba tista' teżerċita ġurisdizzjoni minflok l-awtorità tal-Istat Kontraent tar-residenza abitwali tat-tifel biss jekk l-awtorità aħħar imsemmija aċċetat it-talba.

#### Artikolu 10

(1) Mingħajr preġudizzju għall-Artikoli 5 sa 9, l-awtoritajiet ta' Stat Kontraent li jeżerċitaw ġurisdizzjoni li jiddeċiedu applikazzjoni għad-divorzju jew separazzjoni legali tal-ġenituri ta' tifel li abitwalment jkun residenti fi Stat Kontraenti ieħor, jew għall-annullament taż-żwieġ tagħhom jistgħu, jekk il-liġi tal-

Istat tagħhom hekk tipprovdi, jiehdu miżuri bil-għan li jipproteġu l-persuna jew il-proprjetà ta' dan it-tifel jekk:

(a) fil-hin tal-bidu tal-proċeduri, wiehed mill-ġenituri tiegħu jew tagħha abitwalment jkun residenti f'dak l-Istat u wiehed minnhom għandu r-responsabbiltà tal-ġenituri fir-rigward tat-tifel, u

(b) il-ġurisdizzjoni ta' dawn l-awtoritajiet biex jiehdu dawn il-miżuri hi aċċettata mill-ġenituri, kif ukoll minn kwalunkwe persuna oħra li għandha r-responsabbiltà tal-ġenituri fir-rigward tat-tifel, u hi fl-aħjar interessi tat-tifel.

(2) Il-ġurisdizzjoni prevista fil-paragrafu (1) biex jittiehdu miżuri għall-protezzjoni tat-tifel tieqaf malli d-deċiżjoni li taċċetta jew tirrifjuta l-applikazzjoni għad-divorzju, is-separazzjoni legali jew l-annullament taż-żwieġ tkun saret *res judicata*, jew il-proċeduri nġhalqu għal raġuni oħra.

#### Artikolu 11

(1) F'kull każ ta' urġenza, l-awtoritajiet ta' kwalunkwe Stat Kontraenti, li fit-territorju tiegħu huwa preżenti t-tifel jew proprjetà tat-tifel, għandhom ġurisdizzjoni biex jiehdu kwalunkwe miżura ta' protezzjoni neċessarja.

(2) L-effetti tal-miżuri meħudin taht il-paragrafu ta' qabel dan fir-rigward ta' tifel li abitwalment jkun residenti f'Stat Kontraenti għandhom jieqfu malli l-awtoritajiet li għandhom ġurisdizzjoni taht l-Artikoli 5 sa 10 jkunu hađu l-miżuri meħtieġa mis-sitwazzjoni.

(3) L-effetti ta' miżuri meħudin taht il-paragrafu (1) fir-rigward tat-tifel li abitwalment jkun residenti fi Stat mhux Kontraenti għandhom jieqfu f'kull Stat Kontraenti malli miżuri meħtieġa mis-sitwazzjoni u meħudin mill-awtoritajiet ta' Stat ieħor huma rikonoxxuti fl-Istati Kontraenti inkwistjoni.

#### Artikolu 12

(1) Bla ħsara għall-Artikolu 7, l-awtoritajiet ta' Stat Kontraenti, li fit-territorju tiegħu hu preżenti t-tifel jew proprjetà tat-tifel, għandhom ġurisdizzjoni biex jiehdu miżuri ta' natura proviżorja għall-protezzjoni tal-persuna jew proprjetà tat-tifel li għandhom effett territorjali limitat għall-Istat inkwistjoni, sakemm dawn il-miżuri mhumiex inkompatibbli ma' miżuri li jkunu ttiehdu minn awtoritajiet li għandhom ġurisdizzjoni taht l-Artikoli 5 sa 10.

(2) Il-miżuri meħudin taht il-paragrafu ta' qabel fir-rigward tat-tifel li abitwalment jkun residenti fi Stat Kontraenti għandhom jispicċaw malli l-awtoritajiet li għandhom ġurisdizzjoni taht l-Artikoli 5 sa 10 jkunu hađu deċiżjoni fir-rigward tal-miżuri ta' protezzjoni li jistgħu jkunu meħtieġa mis-sitwazzjoni.

(3) Il-miżuri meħudin taht il-paragrafu (1) fir-rigward ta' tifel li

abitwalment jkun residenti fi Stat mhux Kontraenti għandhom jispiċċaw fl-Istat Kontraenti fejn il-miżuri kienu meħudin malli miżuri meħtieġa mis-sitwazzjoni u meħudin mill-awtoritajiet ta' Stat ieħor jiġu rikonoxxuti fl-Istat Kontraenti inkwistjoni.

#### Artikolu 13

(1) L-awtoritajiet ta' Stat Kontraenti li għandhom ġurisdizzjoni taħt l-Artikoli 5 sa 10 li jieħdu miżuri għall-protezzjoni tal-persuna jew proprjetà tat-tifel għandhom jastjenu milli jeżerċitaw din il-ġurisdizzjoni jekk, fil-hin tal-bidu tal-proċeduri, miżuri korrispondenti kienu mitlubin mill-awtoritajiet ta' Stat Kontraenti ieħor li għandu ġurisdizzjoni taħt l-Artikoli 5 sa 10 fil-hin tat-talba u għandhom taħt konsiderazzjoni.

(2) Id-dispożizzjonijiet tal-paragrafu ta' qabel dan m'għandhomx jghoddu jekk l-awtoritajiet, li quddiemhom it-talba għal miżuri kienet inizjalment introdotta, ma aċċettawx il-ġurisdizzjoni.

#### Artikolu 14

Il-miżuri meħudin skond l-Artikoli 5 sa 10 jibqgħu fis-seħħ skond it-termini tagħhom, ukoll jekk bidla fiċ-ċirkostanzi eliminat il-bażi li fuqha kienet mibnija l-ġurisdizzjoni, sakemm l-awtoritajiet li għandhom ġurisdizzjoni taħt il-Konvenzjoni ma mmodifikawx, bidlu jew waqqfu dawn il-miżuri.

### KAPITOLU III - LIĠI APPLIKABBLI

#### Artikolu 15

(1) Fl-eżerċizzju tal-ġurisdizzjoni tagħhom taħt id-dispożizzjonijiet tal-Kapitolu II, l-awtoritajiet tal-Istati Kontraenti għandhom japplikaw il-liġi tagħhom.

(2) Madankollu, sa fejn il-protezzjoni tal-persuna jew tal-proprjetà tat-tifel teħtieġ, jistgħu eċċezzjonalment japplikaw jew jieħdu f'konsiderazzjoni il-liġi ta' Stat ieħor li miegħu s-sitwazzjoni għandha konnessjoni sostanzjali.

(3) Jekk ir-residenza abitwali tat-tifel tinbidel għal Stat Kontraenti ieħor, il-liġi ta' dak l-Istat ieħor tibda tirregola, mill-hin tal-bidla, il-kondizzjonijiet tal-applikazzjoni tal-miżuri meħudin fl-Istat tar-residenza abitwali ta' qabel.

#### Artikolu 16

(1) L-attribuzzjoni jew estinzjoni tar-responsabbiltà tal-ġenituri b'operazzjoni tal-liġi, mingħajr intervent ta' awtorità ġudizzjarja jew amministrattiva, hi rregolata mil-liġi tal-Istat tar-residenza abitwali tat-tifel.

(2) L-attribuzzjoni jew l-estinzjoni tar-responsabbiltà tal-ġenituri permezz

ta' ftehim jew att unilaterali, mingħajr l-intervent ta' awtorità ġudizzjarja jew amministrattiva, hi regolata mil-liġi tal-Istat tar-residenza abitwali tat-tifel fiż-żmien meta l-ftehim jew att unilaterali jieħu effett.

(3) Ir-responsabbiltà tal-ġenituri li teżisti taħt il-liġi tal-Istat tar-residenza abitwali tat-tifel tkompli wara bidla ta' dik ir-residenza abitwali għal Stat ieħor.

(4) Jekk ir-residenza abitwali tat-tifel tinbidel, l-attribuzzjoni tar-responsabbiltà tal-ġenituri permezz tal-operazzjoni tal-liġi lil persuna li m'għandhiex diġà din ir-responsabbiltà hi regolata mil-liġi tal-Istat tar-residenza abitwali ġdida.

#### Artikolu 17

L-eżerċizzju tar-responsabbiltà tal-ġenituri hi regolata mil-liġi tal-Istat tar-residenza abitwali tat-tifel. Jekk ir-residenza abitwali tat-tifel tinbidel, hi regolata mil-liġi tal-Istat tar-residenza abitwali ġdida.

#### Artikolu 18

Ir-responsabbiltà tal-ġenituri msemmija fl-Artikolu 16 tista' tiġi tterminata, jew il-kondizzjonijiet tal-eżerċizzju tagħha mmodifikati, minn miżuri meħudin taħt din il-Konvenzjoni.

#### Artikolu 19

(1) Il-validità ta transazzjoni magħmula bejn parti terza u persuna oħra li tkun intitolata li taggixxi bhala r-rappreżentant legali tat-tifel taħt il-liġi tal-Istat fejn it-transazzjoni kienet saret ma tistax tiġi kkontestata, u l-parti terza ma tistax tinsab haġja, fuq il-bażi tar-raġuni unika li l-persuna l-oħra ma kenitx intitolata tagixxi bhala r-rappreżentant legali taħt il-liġi indikata mid-dispożizzjonijiet ta' dan il-Kapitolu, sakemm il-parti terza kienet taf jew jew kellha tkun taf li r-responsabbiltà tal-ġenituri kienet irregolata mil-liġi tal-aħħar.

(2) Il-paragrafu ta' qabel dan jgħodd biss jekk it-transazzjoni kienet magħmula bejn persuni preżenti fuq it-teritorju tal-istess Stat.

#### Artikolu 20

Id-dispożizzjonijiet ta' dan il-Kapitolu jgħoddu ukoll jekk il-liġi indikata minnhom hija l-liġi ta' Stat li mhux Stat Kontraenti.

#### Artikolu 21

(1) F'dan il-Kapitolu l-kelma "liġi" tfisser il-liġi fis-seħh fi Stat minbarra r-regoli tiegħu dwar id-dritt internazzjonali privat.

(2) Madankollu, jekk il-liġi applikabbli skond l-Artikolu 16 hi dik ta' Stat li

mhuwiex Stat Kontraenti u jekk ir-regoli dwar id-dritt internazzjonali privat ta' dak l-Istat jinnominaw il-ligi ta' Stat mhux Kontraenti ieħor li kien japplika l-ligi tiegħu, il-ligi tal-Istat l-aħħar imsemmi tapplika. Jekk dak l-Istat mhux Kontraenti ieħor ma kienx japplika l-ligi proprja, il-ligi applikabbli hi dik indikata fl-Artikolu 16.

## Artikolu 22

L-applikazzjoni tal-ligi indikata fid-dispożizzjonijiet ta' dan il-Kapitolu tista' tiġi rrifjutata biss jekk din l-applikazzjoni kienet tkun tmur manifestament kontra l-ordni pubbliku, b'konsiderazzjoni mogħtija lill-aħjar interessi tat-tifel.

## KAPITOLU IV - RIKONOXXIMENT U INFURZAR

### Artikolu 23

1. Il-miżuri meħudin mill-awtoritajiet tal-Istat Kontraenti għandhom jiġu rikonoxxuti skond l-operazzjoni tal-ligi fl-Istati Kontraenti oħra kollha.

2. Rikonoxximent jista' madankollu jiġi rrifjutat -

(a) jekk il-miżura ttieħdet minn awtorità li l-ġurisdizzjoni tagħha ma kenitx ibbazata fuq waħda mir-raġunijiet previsti fil-Kapitolu II;

(b) jekk il-miżura ttieħdet, hlief f'każ ta' urġenza, fil-kuntest ta' proċeduri ġudizzjarji jew amministrattivi, mingħajr ma tkun ingħatat opportunità lit-tifel biex jinstema, bi ksur tal-prinċipji fundamentali tal-proċedura tal-Istat rikjest;

(c) fuq it-talba ta' kwalunkwe persuna li tippretendi li l-miżura tikser ir-responsabbiltà tal-ġenitur tiegħu jew tagħha, jekk din il-miżura kienet meħuda, hlief f'każ ta' urġenza, mingħajr ma din il-persuna tkun ingħatat opportunità biex tinstema;

(d) jekk dan ir-rikonoxximent jmur manifestament kontra l-ordni pubbliku tal-Istat rikjest, b'konsiderazzjoni mogħtija għall-aħjar interessi tat-tifel;

(e) jekk il-miżura hi inkompatibbli ma' miżura meħuda aktar tard fl-Istat mhux Kontraenti tar-residenza abitwali tat-tifel, fejn din il-miżura meħuda aktar tard taderixxi mar-reqwiziti għar-rikonoxximent fl-Istat rikjest;

(f) jekk il-proċedura prevista fl-Artikolu 33 ma kenitx segwita.

### Artikolu 24

Mingħajr preġudizzju għall-Artikolu 23(1), kwalunkwe persuna interessata tista' titlob lill-awtoritajiet kompetenti ta' Stat Kontraenti li jiddeċiedu fuq ir-

rikonoxximent jew nuqqas ta' rikonoxximent ta' miżura meħuda fi Stat Kontraenti ieħor. Il-proċedura hi rregolata mil-ligi tal-Istat rikjest.

#### Artikolu 25

L-awtorità tal-Istat rikjest hi marbuta mal-konklużjonijiet ta' fatt li fuqhom l-awtorità tal-Istat fejn ittiehdet il-miżura bbażat il-ġurisdizzjoni tagħha.

#### Artikolu 26

(1) Jekk miżuri meħudin fi Stat Kontraenti wiehed u infurzabbli hemm jeħtieġu nfużzar fi Stat Kontraenti ieħor, għandhom, fuq talba minn parti interessata, jiġu ddikjarati infurzabbli jew registrati għall-għan ta' infurzar f'dak l-Istat ieħor skond il-proċedura prevista fil-ligi tal-Istat l-aħħar imsemmi.

(2) Kull Stat Kontraenti għandu japplika proċedura sempliċi u rapida fir-rigward tad-dikjarazzjoni ta' infurzabbiltà jew registrazzjoni.

(3) Id-dikjarazzjoni ta' infurzabbiltà jew registrazzjoni tista' tiġi rrifjutata biss għal waħda mir-raġunijiet stabbiliti fl-Artikolu 23(2).

#### Artikolu 27

Mingħajr preġudizzju għar-reviżjoni kif hi neċessarja fl-applikazzjoni tal-Artikoli ta' qabel dan, m'għandux ikun hemm reviżjoni tal-merti tal-miżura meħuda.

#### Artikolu 28

Miżuri meħudin fi Stat Kontraenti wiehed u ddikjarati infurzabbli, jew registrati għall-infurzar, fi Stat Kontraenti ieħor għandhom jiġu nfużzati fl-Istat tal-aħħar bħallikieku kienu meħudin mill-awtoritajiet ta' dak l-Istat. L-infurzar jseħħ skond il-ligi tal-Istat rikjest sal-punt previst minn din il-ligi, waqt li jitqiesu l-aħjar interessi tat-tifel

### KAPITOLU V - KOPERAZZJONI

#### Artikolu 29

(1) Stat Kontraenti għandu jinnomina awtorità ċentrali biex twettaq id-doveri li kienu imposti mill-Konvenzjoni fuq dawn l-awtoritajiet.

(2) Stati Federali, Stati b'izjed minn sistema waħda ta' ligi jew Stati li għandhom unitajiet territorjali awtonomi għandhom ikunu ħielsa li jaħtru iżjed minn awtorità ċentrali waħda u li jispeċifikaw il-limitu territorjali jew personali tal-funzjonijiet tagħhom. Fejn Stat hatar iżjed minn awtorità ċentrali waħda, għandu jinnomina l-awtorità ċentrali li lilha kwalunkwe komunikazzjoni tista' tiġi indirizzata għat-trasmissjoni lill-awtorità ċentrali xierqa f'dak l-Istat.

### Artikolu 30

(1) L-awtoritajiet ċentrali għandhom jikoperaw ma' xulxin u jipporomwovu l-koperazzjoni bejn l-awtoritajiet kompetenti fl-Istati tagħhom sabiex jilhqu l-għanijiet tal-Konvenzjoni.

(2) Dwar l-applikazzjoni tal-Konvenzjoni, huma għandhom jieħdu l-passi xierqa biex jipprovdu informazzjoni dwar il-liġijiet ta', u s-servizzi disponibbli, fl-Istati tagħhom li jirrigwardaw il-protezzjoni tat-tfal.

### Artikolu 31

L-awtorità ċentrali tal-Istat Kontraenti, direttament jew permezz ta' awtoritajiet pubbliċi jew organi oħra, għandha tiegħu l-passi xierqa kollha sabiex -

(a) tiffacilita l-komunikazzjonijiet u toffri l-assistenza prevista fl-Artikoli 8 u 9 u f'dan il-Kapitolu;

(b) tiffacilita, permezz ta' medjazzjoni, konċiljazzjoni jew mezzi simili, soluzzjonijiet miftehmin għall-protezzjoni tal-persuna jew proprjetà tat-tifel f'sitwazzjonijiet fejn tapplika l-Konvenzjoni;

(c) tipprovdi, fuq it-talba ta' awtorità kompetenti ta' Stat Kontraenti ieħor, assistenza fl-iskoperta ta' fejn jinstab it-tifel fejn jidher li t-tifel jista' jkun preżenti u fi bżonn ta' protezzjoni ġewwa t-territorju tal-Istat rikjest.

### Artikolu 32

Fuq talba magħmula b'raġunijiet li jsostnuha mill-awtorità ċentrali jew awtorità kompetenti oħra ta' kwalunkwe Stat Kontraenti li miegħu t-tifel għandu konnessjoni sostanzjali, l-awtorità ċentrali ta' l-Istat Kontraenti fejn it-tifel abitwalment jkun residenti u preżenti tista', direttament jew permezz ta' awtoritajiet pubbliċi jew organi oħra -

(a) tipprovdi rapport fuq is-sitwazzjoni tat-tifel;

(b) titlob lill-awtorità kompetenti tal-Istat tagħha biex tikkunsidra l-bżonn li tiegħu miżuri għall-protezzjoni tal-persuna jew proprjetà tat-tifel.

### Artikolu 33

(1) Jekk awtorità li għandha ġurisdizzjoni taħt l-Artikoli 5 sa 10 tikkontempla t-tqegħid tat-tifel għo familja *foster* jew kura istituzzjonjonali, jew l-provdiment ta' kura minn "kafala" jew istituzzjoni analoga, u jekk dan it-tqegħid jew dan il-provdiment ta' kura għandhom iseħħu fi Stat Kontraenti ieħor, din għandha l-ewwel tikkonsulta mal-awtorità ċentrali jew awtorità kompetenti oħra tal-Istat Kontraenti l-aħħar imsemmi. Għal dak il-għan għandha tittrasmetti rapport fuq it-tifel flimkien mar-raġunijiet għat-tqegħid propost jew provdiment ta' kura.

(2) Id-deċiżjoni dwar it-tqeghid fi jew provdiment ta' kura tista' tigi magħmula fl-Istat rikjest biss jekk l-awtorità ċentrali jew awtorità kompetenti oħra tal-Istat rikjest tat il-kunsens għat-tqeghid jew provdiment ta' kura, waqt li jitqiesu l-aħjar interessi tat-tifel.

#### Artikolu 34

(1) Fejn miżura ta' protezzjoni hi kkontemplata, l-awtoritajiet kompetenti taħt il-Konvenzjoni, jekk is-sitwazzjoni tat-tifel hekk teħtieg, jistgħu jitolbu kwalunkwe awtorità ta' Stat Kontraenti ieħor li għandha informazzjoni rilevanti għall-protezzjoni tat-tifel li tikkomunika din l-informazzjoni.

(2) Stat Kontraenti jista' jiddikjara li talbiet taħt il-paragrafu (1) għandhom jiġu kkomunikati lill-awtoritajiet tiegħu biss permezz tal-awtorità ċentrali tiegħu.

#### Artikolu 35

(1) L-awtoritajiet kompetenti ta' Stat Kontraenti jistgħu jitolbu lill-awtoritajiet ta' Stat Kontraenti ieħor biex jassistu fl-implimentazzjoni ta' miżuri ta' protezzjoni meħudin taħt din il-Konvenzjoni, speċjalment fl-assigurazzjoni tal-eżerċizzju effettiv ta' drittijiet ta' aċċess kif ukoll id-dritt li jzommu kuntatti diretti fuq bażi regolari.

(2) L-awtoritajiet ta' Stat Kontraenti li fih it-tifel ma jkunx abitwalment residenti jistgħu, fuq it-talba ta' ġenitur li jgħix f'dak l-Istat li qed ifittex li jikseb jew li jzomm aċċess għat-tifel, jiġbru informazzjoni jew prova u jistgħu jirrelataw dwar l-adegwatezza ta' dak il-ġenitur sabiex jeżerċita aċċess u dwar il-kondizzjonijiet li taħthom l-aċċess għandu jiġi eżerċitat. Awtorità li teżerċita ġurisdizzjoni taħt l-Artikoli 5 sa 10 biex tistabbilixxi applikazzjoni dwar aċċess għat-tifel, għandha taċċetta u tikkunsidra dik l-informazzjoni, prova u riżultati qabel ma tasal għad-deċiżjoni tagħha.

(3) Awtorità li għandha ġurisdizzjoni taħt l-Artikoli 5 sa 10 li tiddeċiedi fuq l-aċċess tista' taġġorna proċedura sakemm ikun pendenti r-riżultat ta' talba magħmula taħt il-paragrafu (2), partikolarment, meta qed tikkunsidra applikazzjoni biex tirrestringi jew ittemm drittijiet ta' aċċess mogħtija fl-Istat tar-residenza abitwali ta' qabel tat-tifel.

(4) Xejn f'dan l-Artikolu ma għandu jipprevjeni awtorità li għandha ġurisdizzjoni taħt l-Artikoli 5 sa 10 milli tiehu miżuri temporanji waqt li jkun pendenti r-riżultat tat-talba magħmula taħt il-paragrafu (2).

#### Artikolu 36

Fi kwalunkwe każ fejn it-tifel hu espost għal periklu serju, l-awtoritajiet kompetenti tal-Istat Kontraenti fejn miżuri għall-protezzjoni tat-tifel ittieħdu jew qegħdin taħt konsiderazzjoni, jekk huma infurmati li r-residenza tat-tifel nbidlet għal, jew li t-tifel hu preżenti fi Stat ieħor, għandhom jinfurmaw l-awtoritajiet ta'

dak l-Istat ieħor dwar il-periklu involut u l-miżuri meħudin jew taħt konsiderazzjoni.

#### Artikolu 37

Awtorità m'għandhiex titlob jew tittrasmetti kwalunkwe informazzjoni taħt dan il-Kapitolu jekk din, fl-opinjoni tagħha, x'aktarx tpoġġi l-persuna jew il-proprjetà tat-tifel f'periklu, jew tikkostitwixxi theddida serja għal-libertà jew ħajja ta' membru tal-familja tat-tifel.

#### Artikolu 38

(1) Mingħajr preġudizzju għall-possibbiltà li jimponu hlasijiet raġonevoli għall-provdiment ta' servizzi, awtoritajiet ċentrali u awtoritajiet pubbliċi ohra ta' Stati Kontraenti għandhom iġorru l-ispejjeż tagħhom fl-applikazzjoni tad-dispożizzjonijiet ta' dan il-Kapitolu.

(2) Kwalunkwe Stat Kontraenti jista' jidhol fi ftehim ma' wiehed jew aktar Stati Kontraenti ohra dwar l-allokkazzjoni ta' hlasijiet.

#### Artikolu 39

Kwalunkwe Stat Kontraenti jista' jidhol fi ftehim ma' wiehed jew aktar Stati Kontraenti ohra bil-għan li tittejjeb l-applikazzjoni ta' dan il-Kapitolu fir-relazzjonijiet reċiproċi tagħhom. L-Istati li kkonkludew ftehim bħal dan għandhom jittrasmettu kopja lid-depożitarju tal-Konvenzjoni.

### KAPITOLU VI - DISPOŻIZZJONIJIET ĠENERALI

#### Artikolu 40

(1) L-awtoritajiet tal-Istat Kontraenti tar-residenza abitwali tat-tifel, jew tal-Istat Kontraenti fejn ittieħdet miżura ta' protezzjoni, tista' tagħti lill-persuna li għandha r-responsabbiltà tal-ġenituri jew lill-persuna li għandha l-protezzjoni tal-persuna jew tal-proprjetà tat-tifel, fuq it-talba tiegħu jew tagħha, ċertifikat li jindika l-awtorità li biha l-persuna hi intitolata li taġixxi u l-poteri mogħtija lilu jew lilha.

(2) Il-kapacitajiet u poteri indikati fiċ-ċertifikat huma meqjusin li jappartjenu lil dik il-persuna, fl-assenza ta' prova kuntrarja.

(3) Kull Stat Kontraenti għandu jinnomina l-awtoritajiet kompetenti li jagħmlu ċ-ċertifikat.

#### Artikolu 41

Id-*data* personali miġbura jew trasmessa taħt il-Konvenzjoni għandha tigi uzata biss għall-għanijiet li għalihom kienu miġburin jew trasmessi.

Artikolu 42

L-awtoritajiet li lilhom informazzjoni hi trasmessa għandhom jassiguraw il-konfidenzjalità tagħha, skond il-liġi tal-Istat tagħhom.

Artikolu 43

Id-dokumenti kollha mghoddija jew ikkunsinnati taht din il-Konvenzjoni għandhom ikunu ezenti mil-legalizzazzjoni jew kwalunkwe formalità simili.

Artikolu 44

Kull Stat Kontraenti jista' jinnomina l-awtoritajiet li lilhom talbiet taht l-Artikoli 8, 9 u 33 għandhom ikunu indirizzati.

Artikolu 45

(1) Id-deskrizzjonijiet imsemmijin fl-Artikoli 29 u 44 għandhom ikunu komunikati lil *Bureau* Permanenti tal-Konferenza ta' l-Aja dwar id-Dritt Internazzjonali Privat.

(2) Id-dikjarazzjoni msemmija fl-Artikolu 34(2), għandha tigi magħmula lid-depożitarju tal-Konvenzjoni.

Artikolu 46

Stat Kontraenti li fih sistemi ta' liġi jew settijiet ta' regoli tal-liġi differenti japplikaw għall-protezzjoni tat-tifel u l-proprjetà tiegħu jew tagħha m'għandhomx ikunu marbutin li japplikaw ir-regoli ta' din il-Konvenzjoni lill-kunflitti unikament bejn dawn is-sistemi ta' liġi jew settijiet ta' regoli tal-liġi differenti.

Artikolu 47

Fir-rigward ta' Stat li fih tnejn jew aktar sistemi ta' liġi jew settijiet ta' regoli tal-liġi fir-rigward ta' kwalunkwe haġa li tittratta din il-Konvenzjoni japplikaw f'unitajiet territorjali differenti -

(1) kwalunkwe riferenza għar-residenza abitwali f'dak l-Istat għandha tittiehed bhala r-residenza abitwali f'unità territorjali;

(2) kwalunkwe riferenza għall-presenza tat-tifel f'dak l-Istat għandha tittiehed bhala riferenza għall-preżenza f'unità territorjali;

(3) kwalunkwe riferenza għal-lokalità ta' proprjetà tat-tifel f'dak l-Istat għandha tigi meħuda bhala riferenza għal-lokalità ta' proprjetà tat-tifel f'unità territorjali;

(4) kwalunkwe riferenza għall-Istat li tiegħu t-tifel huwa ċittadin

għandha tittiehed bħala riferenza għall-unità territorjali nominata mil-ligi ta' dak l-Istat jew, fl-assenza ta' regoli rilevanti, għall-unità territorjali li magħha t-tifel għandu l-konnessjoni l-aktar viċina;

(5) kwalunkwe riferenza għall-Istat li l-awtoritajiet tiegħu għandhom applikazzjoni għad-divorzju jew separazzjoni legali tal-ġenituri tat-tifel, jew għall-annullament taż-żwieġ tagħhom, għandha tittiehed bħala riferenza għall-unità territorjali li l-awtoritajiet tagħha għandhom din l-applikazzjoni;

(6) kwalunkwe riferenza għall-Istat li miegħu t-tifel għandu konnessjoni sostanzjali għandha tiġi meħuda bħala riferenza għall-unità territorjali li miegħu t-tifel għandu din il-konnessjoni;

(7) kwalunkwe riferenza għall-Istat minn fejn tneħħa it-tifel jew fejn qed qiegħda jinżamm/tinżamm għandha tittiehed bħala riferenza għall-unità territorjali li minnha t-tifel gie mneħħi jew li fiha hu jew hi ġew miżmuma;

(8) kwalunkwe riferenza għall-awtoritajiet jew korpjiet ta' dak l-Istat, barra l-awtoritajiet ċentrali, għandha tiġi meħuda bħala riferenza għal dawk awtorizzati li jaġixxu fl-unità territorjali rilevanti;

(9) kwalunkwe riferenza għal-ligi jew proċedura jew awtorità tal-Istat li fih il-miżura ttieħdet għandha tiġi meħuda bħala riferenza għal-ligi jew proċedura jew awtorità tal-unità territorjali li fiha din il-miżura ttieħdet;

(10) kwalunkwe riferenza għal-ligi jew proċedura jew awtorità tal-Istat rikjest għandha tiġi meħuda bħala riferenza għal-ligi jew il-proċedura jew l-awtorità tal-unità territorjali li fiha hu mfittex ir-rikonoxximent jew l-infurzar.

#### Artikolu 48

Għall-iskop tal-identifikazzjoni tal-ligi applikabbli taħt il-Kapitolu III, fir-rigward ta' Stat li jikkompreni tnejn jew aktar unitajiet territorjali li kull waħda minnhom għandha s-sistema ta' ligi proprja jew settijiet ta' regoli tal-ligi rigwardanti kwistjonijiet koperti minn din il-Konvenzjoni, ir-regoli li ġejjin japplikaw -

(a) jekk hemm regoli fis-seħh f'dan l-Istat li jidentifikaw liema ligi ta' unità territorjali hija applikabbli, il-ligi ta' dik l-unità tapplika;

(b) fl-assenza ta' dawn ir-regoli, il-ligi tal-unità territorjali rilevanti kif definita fl-Artikolu 47 tapplika.

#### Artikolu 49

Għall-iskop tal-identifikazzjoni tal-ligi applikabbli taħt il-Kapitolu III, fir-rigward ta' Stat li għandu tnejn jew aktar sistemi ta' ligi jew settijiet ta' regoli tal-

liġi applikabbi għal kategoriji differenti ta' persuni rigward kwistjonijiet koperti minn din il-Konvenzjoni, ir-regoli li ġejjin japplikaw:

(a) jekk hemm regoli fis-sehħ f'dan l-Istat li jiddentifikaw liema fost dawn il-liġijiet tapplika, dik il-liġi tapplika;

(b) fl-assenza ta' dawn ir-regoli, il-liġi tas-sistema jew tas-settijiet ta' regoli tal-liġi li magħha t-tifel għandu l-konessjoni l-aktar viċina tapplika.

#### Artikolu 50

Din il-Konvenzjoni m'għandhiex taffetwa l-Konvenzjoni tal-25 ta' Ottubru 1980 fuq l-Aspetti Ċivili tal-Ħtif Internazzjonali tat-Tfal, kif bejn Partijiet għaż-żewġ Konvenzjonijiet. Xejn, madankollu, ma jipprekludi dispożizzjonijiet ta' din il-Konvenzjoni milli jiġu invokati għall-iskopijiet tal-kisba tar-ritorn ta' tifel li kien tneħħa jew inżamm ingustament jew ta' organizzazzjoni ta' drittijiet ta' aċċess.

#### Artikolu 51

F'relazzonijiet bejn l-Istati Kontraenti, din il-Konvenzjoni tiegħu l-post tal-Konvenzjoni tal-5 ta' Ottubru 1961 dwar il-poteri ta' awtoritajiet u l-liġi applikabbli fir-rigward tal-protezzjoni ta' minuri, u l-Konvenzjoni li tirregola t-tutela ta' minuri, iffirmata fl-Aja fit-12 ta' Ġunju 1902, mingħajr preġudizzju għar-rikonossimnet ta' miżuri meħudin taht il-Konvenzjoni tal-5 ta' Ottubru 1961 imsemmija hawn fuq.

#### Artikolu 52

(1) Din il-Konvenzjoni ma taffetwa l-ebda strument internazzjonali li fih Stati Kontraenti huma Partijiet u li jkunu jinsabu fih dispożizzjonijiet fuq materji regolati mill-Konvenzjoni, sakemm ma ssirx dikjarazzjoni kuntrarja mill-Istati, li jkunu Partijiet għal dan l-istrument.

(2) Din il-Konvenzjoni ma taffetwax il-possibbiltà għal wiehed jew aktar mill-Istati Kontraenti li jikkonkludu ftehim, fir-rigward ta' tfal li abitwalment jkunu residenti fi kwalunkwe wiehed mill-Istati, li jkunu Partijiet għal dawn il-ftehim, dispożizzjonijiet fuq materji regolati minn din il-Konvenzjoni.

(3) Ftehim li għandhom jiġu konkluzi minn wiehed jew aktar mill-Istati Kontraenti fuq materji fl-iskop ta' din il-Konvenzjoni ma jaffetwawx, fir-relazzjoni ta' dawn l-Istati ma' Stati Kontraenti oħra, l-applikazzjoni tad-dispożizzjonijiet ta' din il-Konvenzjoni.

(4) Il-paragrafi ta' qabel dan japplikaw ukoll għal-liġijiet uniformi bbażati fuq rbit speċjali ta' natura reġjonali jew oħra bejn l-Istati inkwistjoni.

### Artikolu 53

(1) Il-Konvenzjoni għandha tghodd għall-miżuri biss jekk huma meħudin fi Stat wara li l-Konvenzjoni tkun giet fis-seħh għal dak l-Istat.

(2) Il-Konvenzjoni għandha tghodd għar-rikonoxximent u l-infurzar ta' miżuri meħudin wara d-dhul fis-seħh bejn l-Istat fejn il-miżuri għew meħudin u l-Istat rikjest.

### Artikolu 54

(1) Kwalunkwe komunikazzjoni mibgħuta lill-awtorità ċentrali jew lil awtorità oħra ta' Stat Kontraenti għandha tkun fil-lingwa oriġinali, u għandu jkun hemm magħha traduzzjoni għal-lingwa uffiċjali jew waħda mil-lingwi uffiċjali tal-Istat l-iehor jew, fejn dan mhux possibbli, traduzzjoni għall-Franciz jew l-Ingliz.

(2) Madankollu, Stat Kontraenti jista', billi jagħmel riżerva skond l-Artikolu 60, jagħmel oġġezzjoni għall-użu jew tal-Franciz jew l-Ingliz, imma mhux għat-tnejn.

### Artikolu 55

(1) Stat Kontraenti jista', skond l-Artikolu 60 -

(a) jirriżerva l-ġurisdizzjoni tal-awtoritajiet tiegħu li jieħdu miżuri diretti lejn il-protezzjoni ta' proprjetà ta' tifel li jinsab fuq it-territorju tiegħu;

(b) jirriserva d-dritt li ma jirrikonoxxix kwalunkwe responsabbiltà tal-ġenituri jew miżura sal-punt li mhuwiex kompatibbli ma' kwalunkwe miżura meħuda mill-awtoritajiet tiegħu fir-rigward ta' dik il-proprjetà.

(2) Ir-riżerva tista' tiġi ristretta għal ċerti kategoriji ta' proprjetà.

### Artikolu 56

Is-Segretarju Ġenerali tal-Konferenza ta' l-Aja dwar id-Dritt Internazzjonali Privat għandu f'intervalli regolari jsejjaħ Kummissjoni Speċjali sabiex tirrevedi l-operazzjoni Prattika tal-Konvenzjoni.

## KAPITOLU VII - KLAWŻOLI FINALI

### Artikolu 57

(1) Il-Konvenzjoni għandha tinfetaħ għall-iffirmar mill-Istati li kienu Membri tal-Konferenza ta' l-Aja dwar id-Dritt Internazzjonali Privat fi żmien it-Tmintax-il Sessjoni tagħha.

(2) Għandha tkun ratifikata, aċċettata jew approvata u l-istrumenti tar-

ratifika, l-aċċettazzjoni jew l-approvazzjoni għandhom jiġu depożitati mal-Ministeru tal-Affarjiet Barranin tar-Renju tal-Olanda, depożitarju tal-Konvenzjoni.

#### Artikolu 58

(1) Kwalunkwe Stat ieħor jista' jaderixxi għall-Konvenzjoni wara li tkun daħlet fis-seħħ skond l-Artikolu 61, il-paragrafu (1).

(2) L-istrument ta' adeżjoni għandu jiġi ddepożitat mad-depożitarju.

(3) Din l-adeżjoni għandha jkollha effett biss għar-rigward ir-relazzjonijiet bejn l-Istat li għamel l-adeżjoni u dawk l-Istati Kontraenti li ma għamlux oġġezzjoni għall-adeżjoni tiegħu fis-sitt xhur wara l-irċevuta tan-notifika msemmija fl-Artikolu 63(b). Oġġezzjoni bħal din tista' ukoll tiġi mqajma minn Stati fil-hin li jirratifikaw, jaċċettaw jew japprovaw il-Konvenzjoni wara l-adeżjoni. Kwalunkwe oġġezzjoni bħal din għandha tiġi nnotifikata lid-depożitarju.

#### Artikolu 59

(1) Jekk Stat għandu tnejn jew aktar unitajiet territorjali li fihom huma applikabbli sistemi ta' liġi differenti fir-rigward ta' kwistjonijiet ittrattati f'din il-Konvenzjoni, hu jista' fil-hin tal-iffirmar, ratifika, aċċettazzjoni, approvazzjoni jew adeżjoni jiddikjara li l-Konvenzjoni għandha testendi għall-unitajiet territorjali kollha tiegħu jew biss għal waħda jew aktar minnhom u jista' jimmodifika din id-dikjarazzjoni billi jagħti dikjarazzjoni oħra fi kwalunkwe hin.

(2) Kwalunkwe dikjarazzjoni bħal din għandha tiġi notifikata lid-depożitarju u għandha tgħid espressament l-unitajiet territorjali li għalihom tapplika l-Konvenzjoni.

(3) Jekk Stat ma jagħmilx dikjarazzjoni taht dan l-Artikolu, il-Konvenzjoni għandha tiġi estiza lill-unitajiet territorjali kollha ta' dak l-Istat.

#### Artikolu 60

(1) Kwalunkwe Stat jista', mhux aktar tard mill-hin tar-ratifika, aċċettazzjoni, approvazzjoni jew adeżjoni, jew fil-hin li jagħmel dikjarazzjoni skond it-termini tal-Artikolu 59, jagħmel waħda jew iż-żewġ riżervi previsti fl-Artikolu 54(2), u fl-Artikolu 55. L-ebda riżerva oħra ma għandha tiġi permessa.

(2) Kwalunkwe Stat jista' fi kwalunkwe hin jirtira riserva li huwa għamel. Dan l-irtirar għandu jiġi notifikat lid-depożitarju.

(3) Ir-riżerva għandha tieqaf milli jkollha effett fl-ewwel ġurnata tat-tielet xahar tal-kalendarju wara n-notifika msemmija fil-paragrafu ta' qabel dan.

## Artikolu 61

(1) Il-Konvenzjoni għandha tidhol fis-seħh fl-ewwel ġurnata tax-xahar wara t-tmiem tat-tliet xhur ta' wara d-depożitu tat-tielet strument ta' ratifika, aċċettazzjoni jew approvazzjoni msemmi fl-Artikolu 57.

(2) Wara dan il-Konvenzjoni għandha tidhol fis-seħh -

(a) għal kull Stat li jirratifikaha, jaċċettaha jew japprovaha sussegwentement, fl-ewwel ġurnata tax-xahar wara t-tmiem tat-tliet xhur ta' wara d-depożitu tal-istrument tiegħu tar-ratifika, aċċettazzjoni, approvazzjoni jew adeżjoni;

(b) għal kull Stat li jagħmel adeżjoni, fl-ewwel ġurnata tax-xahar wara t-tmiem ta' tliet xhur wara t-tmiem tal-perjodu ta' sitt xhur previst fl-Artikolu 58(3);

(c) għal unità territorjali li għaliha l-Konvenzjoni giet estiża skond l-Artikolu 59, fl-ewwel ġurnata tax-xahar wara t-tmiem ta' tliet xhur wara n-notifika msemmija f'dak l-Artikolu.

## Artikolu 62

(1) Stat li jkun Parti għall-Konvenzjoni jista' jiddenunzjaha permezz ta' notifika miktuba indirizzata lid-depożitarju. Id-denunzja tista' tkun limitata għal ċerti unitajiet territorjali li għalihom tapplika l-Konvenzjoni.

(2) Id-denunzja tiegħu effett fl-ewwel ġurnata tax-xahar wara t-tmiem ta' tmax-il xahar wara li n-notifika tkun riċevuta mid-depożitarju. Fejn perjodu aktar twil biex id-denunzja tiegħu effett hi speċifikata fin-notifika, id-denunzja tiegħu effett mat-tmiem ta' dan il-perjodu aktar twil.

## Artikolu 63

Id-depożitarju għandu jinnotifika lill-Istati Membri tal-Konferenza ta' l-Aja dwar id-Dritt Internazzjonali Privat u l-Istati li għamlu adeżjoni skond l-Artikolu 58 dwar dan li ġej -

(a) il-firem, ir-ratifiki, l-aċċettazzjonijiet u l-approvazzjonijiet imsemmijin fl-Artikolu 57;

(b) l-adeżjonijiet u l-oġġezzjonijiet magħmula għall-adeżjoni msemmijin fl-Artikolu 58;

(c) id-data meta l-Konvenzjoni tidhol fis-seħh skond l-Artikolu 61;

(d) id-dikjarazzjonijiet imsemmijin fl-Artikolu 34(2), u fl-Artikolu 59;

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(e) il-ftehim msemmin fl-Artikolu 39;

(f) ir-rizervi msemmin fl-Artikolu 54(2), u fl-Artikolu 55 u l-irtirar imsemmi fl-Artikolu 60(2);

(g) id-denunzji msemmin fl-Artikolu 62.

B'xiehda ta' dan l'hawn taht iffirmati, debitament awtorizzati għal dan, iffirmaw din il-Konvenzjoni.

MAGHMULA fl-Aja, illum id-19 ta' Ottubru 1996, fil-lingwi Franciża u Ingliza, it-testi ugwalment awtentiċi, f'kopja singola li għandhom ikunu ddepożitati fl-arkivji tal-Gvern tar-Renju tal-Olanda, u li kopja ċertifikata għandha tintbagħat, permezz ta' kanali diplomatiċi, lil kull wieħed mill-Istati Membri tal-Konferenza ta' l-Aja dwar id-Dritt Internazzjonali Privat fid-data tat-Tmintax-il Sessjoni tagħha.

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Mgħoddi mill-Kamra tad-Deputati fis-Seduta Nru. 294 tas-7 ta' Diċembru, 2010.

MICHAEL FRENDU  
*Speaker*

PAULINE ABELA  
*Skrivan tal-Kamra tad-Deputati*

I assent.

(L.S.)

GEORGE ABELA  
President

14th December, 2010

**ACT No. XXI of 2010**

*AN ACT to enable Malta to ratify the Hague Convention on jurisdiction, applicable law, recognition, enforcement and cooperation in respect of parental responsibility and measures for the protection of children concluded on the 19th October 1996.*

BE IT ENACTED by the President, by and with the advice and consent of the House of Representatives, in this present Parliament assembled, and by the authority of the same, as follows:

1. The short title of this Act is the Protection of Children (Hague Convention) Act, 2010. Short title.

2. In this Act, unless the context otherwise requires - Interpretation.

"central authority" means the Authority appointed under article 6;

"child" means a person under the age of eighteen years;

"Contracting State" means those States, other than Malta, as shall from time to time be specified by the Minister by an order made under article 4;

"Convention" means the Convention on Jurisdiction, Applicable Law, Recognition, Enforcement and Cooperation in respect of Parental Responsibility and Measures for the Protection of Children concluded on the 19th October, 1996 within the Hague Conference on Private International Law, the text of which is set out in the First Schedule;

"judgment" means a judgment or order which is directed to the protection of the person or property of a child and is made either by a court in the State or by a competent judicial or administrative authority of another contracting state;

"Malta" has the same meaning assigned to it by article 124 of the Constitution;

"measure" means a judgment or decision which is made in accordance with Chapter II of the Convention, and references to the taking of a measure shall be construed as references to the making of such a judgment or decision;

"the Minister" means the Minister responsible for justice;

"Non-Contracting State" means any State which is not a Contracting State;

"prescribed" means prescribed by regulations made by the Minister under this Act.

Ratification of  
the Convention.

**3.** By virtue of this Act, the Government of Malta is hereby authorised to ratify the Convention.

Contracting  
States.

**4.** (1) The Minister may, by order in the Gazette, from time to time specify the Contracting States, other than Malta, for the purposes of the Convention.

(2) Such order shall specify the date of coming into force of the Convention, as between Malta and any State specified in the order.

(3) Where the Convention applies, or applies only, to a particular territory or particular territories specified in a declaration made by a Contracting State, reference to that State in subarticles (1) and (2) shall be construed as references to that territory or those territories under Article 59 of the Convention.

Applicability.

**5.** Subject to the provisions of this Act, the provisions of the Convention shall have the force of law in Malta.

6. The functions under the Convention of a central authority shall be discharged by the Director responsible for Welfare. Central authority.

7. (1) References in the Convention to authorities or authority, however qualified, shall be construed, where they occur - Jurisdiction.

(a) in Chapter II of the Convention, as including references to the appropriate court,

(b) in Articles 24, 25 and 28, as references to the Court of Appeal,

(c) in Articles 32, 33, 34, 35(1), 36 and 37, as including references to the appropriate court, and

(d) in Article 35(2), as including a reference to the Civil Court (Family Section).

(2) In proceedings under Chapter IV of the Convention for the recognition, enforcement or non-recognition of a measure taken in another contracting state, the Court of Appeal pursuant to that Chapter and subject to subarticle (5) of this article, if applicable -

(a) if the request is for the recognition or enforcement of the measure, order either -

(i) that the measure be recognised or enforced in whole or in part, subject to any necessary modifications or adaptations, or

(ii) that the request be refused, or

(b) if the request is for the non-recognition of the measure, order either -

(i) that the measure not be recognised, or

(ii) that it be recognised or enforced in whole or in part, subject to any necessary modifications or adaptations.

(3) On the hearing of a request under Article 35(2) of the Convention by a parent residing in the State who is seeking to obtain or maintain access to his or her child (being a child who does not habitually reside therein), the Civil Court (Family Section) shall by order declare either -

(a) that in its opinion the person is suitable to exercise access to the child (in which case the Court may, where

appropriate, specify the conditions under which access should be exercised), or

(b) that the person is not suitable to exercise access to the child.

(4) If, pursuant to Article 55(1)(a) of the Convention, the State has reserved the jurisdiction of its authorities to take measures directed to the protection of property (or certain categories of property) of a child situated on its territory in cases where those authorities would not otherwise have jurisdiction under the Convention, then, for so long as the reservation has not been withdrawn, the appropriate courts shall in those cases have the jurisdiction so reserved.

(5) If, pursuant to Article 55(1)(b) of the Convention, the State has reserved the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to any such property or categories of property mentioned in subarticle (4), then, for so long as the reservation has not been withdrawn, the First Hall of the Civil Court may refuse recognition of any such parental responsibility or measure to the extent that it is so incompatible.

Registration of decisions.

**8.** (1) For the purposes of Articles 24, 25 and 28 of the Convention, any interested person may make an application in the registry of the Court of Appeal for the recognition or non-recognition of a decision or measure taken in another Contracting State.

(2) For the purposes of Article 35(2) of the Convention, a parent may make an application in the registry of the Civil Court (Family Section) for obtaining or maintaining access to his or her child being a child who does not habitually reside in the State.

Appeals.  
Cap. 12.

**9.** The provisions of the Code of Organization and Civil Procedure relative to appeals from decisions of the Civil Court (Family Section) shall apply to such decisions.

Proof of documents and evidence.

**10.** (1) Any document purporting to be a document forwarded or delivered under the Convention may be admitted as evidence that it is such a document and as evidence of any matter to which it relates, subject to it being a duly authenticated copy of a decision, order or measure; and any document purporting to be such a copy shall be deemed to be a true copy unless the contrary is shown.

(2) For the purposes of subarticle (1), a copy is duly authenticated if it bears the seal, or is signed by a judge or officer of the authority in question.

(3) For the purposes of the Convention, any certified copy of any such document, shall be sufficient evidence of anything stated in the document.

**11.** The Court may, either directly or with the assistance of the central authority, address requests for the purposes of Articles 8 or 9 of the Convention, to the appropriate authority in another contracting State. Requests.

**12.** Where the central authority is requested to provide information relating to a child under Articles 31, 32 or 34 of the Convention, it may: Reports.

(a) request any person to make a report to it in writing with respect to any matter which appears to it to be relevant;

(b) request any court to which a written report relating to the child has been made to send it a copy of the report,

and such a request shall be duly complied with.

**13.** (1) The Rule-Making Board set up under article 29 of the Code of Organization and Civil Procedure may make such provision for giving effect to this Act as appears to that Board to be necessary or expedient. Rules of Court. Cap. 12.

(2) Without prejudice to the generality of subarticle (1), rules of court may make provision -

(a) with respect to the procedure on applications to a court under any provision of this Act and with respect to the documents and information to be furnished;

(b) for the giving of directions requiring the disclosure of information about any child who is the subject of proceedings under this Act and for safeguarding its welfare.

(3) The Minister responsible for justice may by regulations under this subarticle establish the fees payable in the registry of the courts in relation to the filing of judicial acts in connection with any procedure under this Act:

Provided that until such fees are so established by the Minister, the fees contained in the Code of Organization and Civil Procedure shall apply.

**14.** The Minister may make regulations prescribing anything that in virtue of this Act is required to be or may be prescribed and generally for carrying out the provisions of this Act and for doing Regulations.

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anything that may be required for the purpose of satisfying the obligations of Malta under the Convention.

Conflict  
between texts.

**15.** In the Schedule to this Act, should there be any conflict between the English and the Maltese texts, the English text shall prevail.

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SCHEDULE

(Article 2)

CONVENTION ON JURISDICTION, APPLICABLE LAW, RECOGNITION,  
ENFORCEMENT AND CO-OPERATION IN RESPECT OF PARENTAL  
RESPONSIBILITY AND MEASURES FOR THE PROTECTION OF  
CHILDREN

(Concluded 19 October 1996)

The States signatory to the present Convention,

Considering the need to improve the protection of children in international situations,

Wishing to avoid conflicts between their legal systems in respect of jurisdiction, applicable law, recognition and enforcement of measures for the protection of children,

Recalling the importance of international co-operation for the protection of children,

Confirming that the best interests of the child are to be a primary consideration,

Noting that the *Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors* is in need of revision,

Desiring to establish common provisions to this effect, taking into account the *United Nations Convention on the Rights of the Child* of 20 November 1989,

Have agreed on the following provisions -

CHAPTER I - SCOPE OF THE CONVENTION

Article 1

(1) The objects of the present Convention are -

(a) to determine the State whose authorities have jurisdiction to take measures directed to the protection of the person or property of the child;

(b) to determine which law is to be applied by such authorities in exercising their jurisdiction;

(c) to determine the law applicable to parental responsibility;

(d) to provide for the recognition and enforcement of such measures of protection in all Contracting States;

(e) to establish such co-operation between the authorities of the Contracting States as may be necessary in order to achieve the purposes of this Convention.

(2) For the purposes of this Convention, the term 'parental responsibility' includes parental authority, or any analogous relationship of authority determining the rights, powers and responsibilities of parents, guardians or other legal representatives in relation to the person or the property of the child.

#### Article 2

The Convention applies to children from the moment of their birth until they reach the age of 18 years.

#### Article 3

The measures referred to in Article 1 may deal in particular with -

(a) the attribution, exercise, termination or restriction of parental responsibility, as well as its delegation;

(b) rights of custody, including rights relating to the care of the person of the child and, in particular, the right to determine the child's place of residence, as well as rights of access including the right to take a child for a limited period of time to a place other than the child's habitual residence;

(c) guardianship, curatorship and analogous institutions;

(d) the designation and functions of any person or body having charge of the child's person or property, representing or assisting the child;

(e) the placement of the child in a foster family or in institutional care, or the provision of care by *kafala* or an analogous institution;

(f) the supervision by a public authority of the care of a child by any person having charge of the child;

(g) the administration, conservation or disposal of the child's property.

#### Article 4

The Convention does not apply to -

(a) the establishment or contesting of a parent-child relationship;

- (b) decisions on adoption, measures preparatory to adoption, or the annulment or revocation of adoption;
- (c) the name and forenames of the child;
- (d) emancipation;
- (e) maintenance obligations;
- (f) trusts or succession;
- (g) social security;
- (h) public measures of a general nature in matters of education or health;
- (i) measures taken as a result of penal offences committed by children;
- (j) decisions on the right of asylum and on immigration.

## CHAPTER II - JURISDICTION

### Article 5

(1) The judicial or administrative authorities of the Contracting State of the habitual residence of the child have jurisdiction to take measures directed to the protection of the child's person or property.

(2) Subject to Article 7, in case of a change of the child's habitual residence to another Contracting State, the authorities of the State of the new habitual residence have jurisdiction.

### Article 6

(1) For refugee children and children who, due to disturbances occurring in their country, are internationally displaced, the authorities of the Contracting State on the territory of which these children are present as a result of their displacement have the jurisdiction provided for in paragraph 1 of Article 5.

(2) The provisions of the preceding paragraph also apply to children whose habitual residence cannot be established.

### Article 7

(1) In case of wrongful removal or retention of the child, the authorities of the Contracting State in which the child was habitually resident immediately before the removal or retention keep their jurisdiction until the child has acquired a habitual residence in another State, and

(a) each person, institution or other body having rights of custody has acquiesced in the removal or retention; or

(b) the child has resided in that other State for a period of at least one year after the person, institution or other body having rights of custody has or should have had knowledge of the whereabouts of the child, no request for return lodged within that period is still pending, and the child is settled in his or her new environment.

(2) The removal or the retention of a child is to be considered wrongful where -

(a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

(b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in sub-paragraph (a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal effect under the law of that State.

(3) So long as the authorities first mentioned in paragraph (1) keep their jurisdiction, the authorities of the Contracting State to which the child has been removed or in which he or she has been retained can take only such urgent measures under Article 11 as are necessary for the protection of the person or property of the child.

#### Article 8

(1) By way of exception, the authority of a Contracting State having jurisdiction under Article 5 or 6, if it considers that the authority of another Contracting State would be better placed in the particular case to assess the best interests of the child, may either

- request that other authority, directly or with the assistance of the central authority of its State, to assume jurisdiction to take such measures of protection as it considers to be necessary, or

- suspend consideration of the case and invite the parties to introduce such a request before the authority of that other State.

(2) The Contracting States whose authorities may be addressed as provided in the preceding paragraph are

- (a) a State of which the child is a national,
  - (b) a State in which property of the child is located,
  - (c) a State whose authorities are seised of an application for divorce or legal separation of the child's parents, or for annulment of their marriage,
  - (d) a State with which the child has a substantial connection.
- (3) The authorities concerned may proceed to an exchange of views.
- (4) The authority addressed as provided in paragraph (1) may assume jurisdiction, in place of the authority having jurisdiction under Article 5 or 6, if it considers that this is in the child's best interests.

#### Article 9

- (1) If the authorities of a Contracting State referred to in Article 8, paragraph (2), consider that they are better placed in the particular case to assess the child's best interests, they may either
- request the competent authority of the Contracting State of the habitual residence of the child, directly or with the assistance of the Central Authority of that State, that they be authorised to exercise jurisdiction to take the measures of protection which they consider to be necessary, or
  - invite the parties to introduce such a request before the authority of the Contracting State of the habitual residence of the child.
- (2) The authorities concerned may proceed to an exchange of views.
- (3) The authority initiating the request may exercise jurisdiction in place of the authority of the Contracting State of the habitual residence of the child only if the latter authority has accepted the request.

#### Article 10

- (1) Without prejudice to Articles 5 to 9, the authorities of a Contracting State exercising jurisdiction to decide upon an application for divorce or legal separation of the parents of a child habitually resident in another Contracting State, or for annulment of their marriage, may, if the law of their State so provides, take measures directed to the protection of the person or property of such child if
- (a) at the time of commencement of the proceedings, one of his or her parents habitually resides in that State and one of them has parental responsibility in relation to the child, and
  - (b) the jurisdiction of these authorities to take such measures has

been accepted by the parents, as well as by any other person who has parental responsibility in relation to the child, and is in the best interests of the child.

(2) The jurisdiction provided for by paragraph (1) to take measures for the protection of the child ceases as soon as the decision allowing or refusing the application for divorce, legal separation or annulment of the marriage has become final, or the proceedings have come to an end for another reason.

#### Article 11

(1) In all cases of urgency, the authorities of any Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take any necessary measures of protection.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken the measures required by the situation.

(3) The measures taken under paragraph (1) with regard to a child who is habitually resident in a non-Contracting State shall lapse in each Contracting State as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

#### Article 12

(1) Subject to Article 7, the authorities of a Contracting State in whose territory the child or property belonging to the child is present have jurisdiction to take measures of a provisional character for the protection of the person or property of the child which have a territorial effect limited to the State in question, in so far as such measures are not incompatible with measures already taken by authorities which have jurisdiction under Articles 5 to 10.

(2) The measures taken under the preceding paragraph with regard to a child habitually resident in a Contracting State shall lapse as soon as the authorities which have jurisdiction under Articles 5 to 10 have taken a decision in respect of the measures of protection which may be required by the situation.

(3) The measures taken under paragraph (1) with regard to a child who is habitually resident in a non-Contracting State shall lapse in the Contracting State where the measures were taken as soon as measures required by the situation and taken by the authorities of another State are recognised in the Contracting State in question.

#### Article 13

(1) The authorities of a Contracting State which have jurisdiction under Articles 5 to 10 to take measures for the protection of the person or property of the

child must abstain from exercising this jurisdiction if, at the time of the commencement of the proceedings, corresponding measures have been requested from the authorities of another Contracting State having jurisdiction under Articles 5 to 10 at the time of the request and are still under consideration.

(2) The provisions of the preceding paragraph shall not apply if the authorities before whom the request for measures was initially introduced have declined jurisdiction.

#### Article 14

The measures taken in application of Articles 5 to 10 remain in force according to their terms, even if a change of circumstances has eliminated the basis upon which jurisdiction was founded, so long as the authorities which have jurisdiction under the Convention have not modified, replaced or terminated such measures.

### CHAPTER III - APPLICABLE LAW

#### Article 15

(1) In exercising their jurisdiction under the provisions of Chapter II, the authorities of the Contracting States shall apply their own law.

(2) However, in so far as the protection of the person or the property of the child requires, they may exceptionally apply or take into consideration the law of another State with which the situation has a substantial connection.

(3) If the child's habitual residence changes to another Contracting State, the law of that other State governs, from the time of the change, the conditions of application of the measures taken in the State of the former habitual residence.

#### Article 16

(1) The attribution or extinction of parental responsibility by operation of law, without the intervention of a judicial or administrative authority, is governed by the law of the State of the habitual residence of the child.

(2) The attribution or extinction of parental responsibility by an agreement or a unilateral act, without intervention of a judicial or administrative authority, is governed by the law of the State of the child's habitual residence at the time when the agreement or unilateral act takes effect.

(3) Parental responsibility which exists under the law of the State of the child's habitual residence subsists after a change of that habitual residence to another State.

(4) If the child's habitual residence changes, the attribution of parental

responsibility by operation of law to a person who does not already have such responsibility is governed by the law of the State of the new habitual residence.

#### Article 17

The exercise of parental responsibility is governed by the law of the State of the child's habitual residence. If the child's habitual residence changes, it is governed by the law of the State of the new habitual residence.

#### Article 18

The parental responsibility referred to in Article 16 may be terminated, or the conditions of its exercise modified, by measures taken under this Convention.

#### Article 19

(1) The validity of a transaction entered into between a third party and another person who would be entitled to act as the child's legal representative under the law of the State where the transaction was concluded cannot be contested, and the third party cannot be held liable, on the sole ground that the other person was not entitled to act as the child's legal representative under the law designated by the provisions of this Chapter, unless the third party knew or should have known that the parental responsibility was governed by the latter law.

(2) The preceding paragraph applies only if the transaction was entered into between persons present on the territory of the same State.

#### Article 20

The provisions of this Chapter apply even if the law designated by them is the law of a non-Contracting State.

#### Article 21

(1) In this Chapter the term "law" means the law in force in a State other than its choice of law rules.

(2) However, if the law applicable according to Article 16 is that of a non-Contracting State and if the choice of law rules of that State designate the law of another non-Contracting State which would apply its own law, the law of the latter State applies. If that other non-Contracting State would not apply its own law, the applicable law is that designated by Article 16.

#### Article 22

The application of the law designated by the provisions of this Chapter can be refused only if this application would be manifestly contrary to public policy, taking into account the best interests of the child.

## CHAPTER IV - RECOGNITION AND ENFORCEMENT

### Article 23

(1) The measures taken by the authorities of a Contracting State shall be recognised by operation of law in all other Contracting States.

(2) Recognition may however be refused -

(a) if the measure was taken by an authority whose jurisdiction was not based on one of the grounds provided for in Chapter II;

(b) if the measure was taken, except in a case of urgency, in the context of a judicial or administrative proceeding, without the child having been provided the opportunity to be heard, in violation of fundamental principles of procedure of the requested State;

(c) on the request of any person claiming that the measure infringes his or her parental responsibility, if such measure was taken, except in a case of urgency, without such person having been given an opportunity to be heard;

(d) if such recognition is manifestly contrary to public policy of the requested State, taking into account the best interests of the child;

(e) if the measure is incompatible with a later measure taken in the non-Contracting State of the habitual residence of the child, where this later measure fulfils the requirements for recognition in the requested State;

(f) if the procedure provided in Article 33 has not been complied with.

### Article 24

Without prejudice to Article 23, paragraph (1), any interested person may request from the competent authorities of a Contracting State that they decide on the recognition or non-recognition of a measure taken in another Contracting State. The procedure is governed by the law of the requested State.

### Article 25

The authority of the requested State is bound by the findings of fact on which the authority of the State where the measure was taken based its jurisdiction.

### Article 26

(1) If measures taken in one Contracting State and enforceable there require enforcement in another Contracting State, they shall, upon request by an interested

party, be declared enforceable or registered for the purpose of enforcement in that other State according to the procedure provided in the law of the latter State.

(2) Each Contracting State shall apply to the declaration of enforceability or registration a simple and rapid procedure.

(3) The declaration of enforceability or registration may be refused only for one of the reasons set out in Article 23, paragraph (2).

#### Article 27

Without prejudice to such review as is necessary in the application of the preceding Articles, there shall be no review of the merits of the measure taken.

#### Article 28

Measures taken in one Contracting State and declared enforceable, or registered for the purpose of enforcement, in another Contracting State shall be enforced in the latter State as if they had been taken by the authorities of that State. Enforcement takes place in accordance with the law of the requested State to the extent provided by such law, taking into consideration the best interests of the child.

### CHAPTER V - CO-OPERATION

#### Article 29

(1) A Contracting State shall designate a central authority to discharge the duties which are imposed by the Convention on such authorities.

(2) Federal States, States with more than one system of law or States having autonomous territorial units shall be free to appoint more than one central authority and to specify the territorial or personal extent of their functions. Where a State has appointed more than one central authority, it shall designate the central authority to which any communication may be addressed for transmission to the appropriate central authority within that State.

#### Article 30

(1) Central authorities shall co-operate with each other and promote co-operation amongst the competent authorities in their States to achieve the purposes of the Convention.

(2) They shall, in connection with the application of the Convention, take appropriate steps to provide information as to the laws of, and services available in, their States relating to the protection of children.

## Article 31

The central authority of a Contracting State, either directly or through public authorities or other bodies, shall take all appropriate steps to -

- (a) facilitate the communications and offer the assistance provided for in Articles 8 and 9 and in this Chapter;
- (b) facilitate, by mediation, conciliation or similar means, agreed solutions for the protection of the person or property of the child in situations to which the Convention applies;
- (c) provide, on the request of a competent authority of another Contracting State, assistance in discovering the whereabouts of a child where it appears that the child may be present and in need of protection within the territory of the requested State.

## Article 32

On a request made with supporting reasons by the central authority or other competent authority of any Contracting State with which the child has a substantial connection, the central authority of the Contracting State in which the child is habitually resident and present may, directly or through public authorities or other bodies,

- (a) provide a report on the situation of the child;
- (b) request the competent authority of its State to consider the need to take measures for the protection of the person or property of the child.

## Article 33

(1) If an authority having jurisdiction under Articles 5 to 10 contemplates the placement of the child in a foster family or institutional care, or the provision of care by *kafala* or an analogous institution, and if such placement or such provision of care is to take place in another Contracting State, it shall first consult with the central authority or other competent authority of the latter State. To that effect it shall transmit a report on the child together with the reasons for the proposed placement or provision of care.

(2) The decision on the placement or provision of care may be made in the requesting State only if the central authority or other competent authority of the requested State has consented to the placement or provision of care, taking into account the child's best interests.

## Article 34

- (1) Where a measure of protection is contemplated, the competent

authorities under the Convention, if the situation of the child so requires, may request any authority of another Contracting State which has information relevant to the protection of the child to communicate such information.

(2) A Contracting State may declare that requests under paragraph (1) shall be communicated to its authorities only through its central authority.

#### Article 35

(1) The competent authorities of a Contracting State may request the authorities of another Contracting State to assist in the implementation of measures of protection taken under this Convention, especially in securing the effective exercise of rights of access as well as of the right to maintain direct contacts on a regular basis.

(2) The authorities of a Contracting State in which the child does not habitually reside may, on the request of a parent residing in that State who is seeking to obtain or to maintain access to the child, gather information or evidence and may make a finding on the suitability of that parent to exercise access and on the conditions under which access is to be exercised. An authority exercising jurisdiction under Articles 5 to 10 to determine an application concerning access to the child, shall admit and consider such information, evidence and finding before reaching its decision.

(3) An authority having jurisdiction under Articles 5 to 10 to decide on access may adjourn a proceeding pending the outcome of a request made under paragraph (2), in particular, when it is considering an application to restrict or terminate access rights granted in the State of the child's former habitual residence.

(4) Nothing in this Article shall prevent an authority having jurisdiction under Articles 5 to 10 from taking provisional measures pending the outcome of the request made under paragraph (2).

#### Article 36

In any case where the child is exposed to a serious danger, the competent authorities of the Contracting State where measures for the protection of the child have been taken or are under consideration, if they are informed that the child's residence has changed to, or that the child is present in another State, shall inform the authorities of that other State about the danger involved and the measures taken or under consideration.

#### Article 37

An authority shall not request or transmit any information under this Chapter if to do so would, in its opinion, be likely to place the child's person or property in danger, or constitute a serious threat to the liberty or life of a member of the child's

family.

#### Article 38

(1) Without prejudice to the possibility of imposing reasonable charges for the provision of services, central authorities and other public authorities of Contracting States shall bear their own costs in applying the provisions of this Chapter.

(2) Any Contracting State may enter into agreements with one or more other Contracting States concerning the allocation of charges.

#### Article 39

Any Contracting State may enter into agreements with one or more other Contracting States with a view to improving the application of this Chapter in their mutual relations. The States which have concluded such an agreement shall transmit a copy to the depositary of the Convention.

### CHAPTER VI - GENERAL PROVISIONS

#### Article 40

(1) The authorities of the Contracting State of the child's habitual residence, or of the Contracting State where a measure of protection has been taken, may deliver to the person having parental responsibility or to the person entrusted with protection of the child's person or property, at his or her request, a certificate indicating the capacity in which that person is entitled to act and the powers conferred upon him or her.

(2) The capacity and powers indicated in the certificate are presumed to be vested in that person, in the absence of proof to the contrary.

(3) Each Contracting State shall designate the authorities competent to draw up the certificate.

#### Article 41

Personal data gathered or transmitted under the Convention shall be used only for the purposes for which they were gathered or transmitted.

#### Article 42

The authorities to whom information is transmitted shall ensure its confidentiality, in accordance with the law of their State.

Article 43

All documents forwarded or delivered under this Convention shall be exempt from legalisation or any analogous formality.

Article 44

Each Contracting State may designate the authorities to which requests under Articles 8, 9 and 33 are to be addressed.

Article 45

(1) The designations referred to in Articles 29 and 44 shall be communicated to the Permanent Bureau of the Hague Conference on Private International Law.

(2) The declaration referred to in Article 34, paragraph (2), shall be made to the depositary of the Convention.

Article 46

A Contracting State in which different systems of law or sets of rules of law apply to the protection of the child and his or her property shall not be bound to apply the rules of the Convention to conflicts solely between such different systems or sets of rules of law.

Article 47

In relation to a State in which two or more systems of law or sets of rules of law with regard to any matter dealt with in this Convention apply in different territorial units -

(1) any reference to habitual residence in that State shall be construed as referring to habitual residence in a territorial unit;

(2) any reference to the presence of the child in that State shall be construed as referring to presence in a territorial unit;

(3) any reference to the location of property of the child in that State shall be construed as referring to location of property of the child in a territorial unit;

(4) any reference to the State of which the child is a national shall be construed as referring to the territorial unit designated by the law of that State or, in the absence of relevant rules, to the territorial unit with which the child has the closest connection;

(5) any reference to the State whose authorities are seised of an

application for divorce or legal separation of the child's parents, or for annulment of their marriage, shall be construed as referring to the territorial unit whose authorities are seised of such application;

(6) any reference to the State with which the child has a substantial connection shall be construed as referring to the territorial unit with which the child has such connection;

(7) any reference to the State to which the child has been removed or in which he or she has been retained shall be construed as referring to the relevant territorial unit to which the child has been removed or in which he or she has been retained;

(8) any reference to bodies or authorities of that State, other than central authorities, shall be construed as referring to those authorised to act in the relevant territorial unit;

(9) any reference to the law or procedure or authority of the State in which a measure has been taken shall be construed as referring to the law or procedure or authority of the territorial unit in which such measure was taken;

(10) any reference to the law or procedure or authority of the requested State shall be construed as referring to the law or procedure or authority of the territorial unit in which recognition or enforcement is sought.

#### Article 48

For the purpose of identifying the applicable law under Chapter III, in relation to a State which comprises two or more territorial units each of which has its own system of law or set of rules of law in respect of matters covered by this Convention, the following rules apply -

(a) if there are rules in force in such a State identifying which territorial unit's law is applicable, the law of that unit applies;

(b) in the absence of such rules, the law of the relevant territorial unit as defined in Article 47 applies.

#### Article 49

For the purpose of identifying the applicable law under Chapter III, in relation to a State which has two or more systems of law or sets of rules of law applicable to different categories of persons in respect of matters covered by this Convention, the following rules apply -

(a) if there are rules in force in such a State identifying which among such laws applies, that law applies;

(b) in the absence of such rules, the law of the system or the set of rules of law with which the child has the closest connection applies.

#### Article 50

This Convention shall not affect the application of the Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, as between Parties to both Conventions. Nothing, however, precludes provisions of this Convention from being invoked for the purposes of obtaining the return of a child who has been wrongfully removed or retained or of organising access rights.

#### Article 51

In relations between the Contracting States this Convention replaces the Convention of 5 October 1961 concerning the powers of authorities and the law applicable in respect of the protection of minors, and the Convention governing the guardianship of minors, signed at The Hague 12 June 1902, without prejudice to the recognition of measures taken under the Convention of 5 October 1961 mentioned above.

#### Article 52

(1) This Convention does not affect any international instrument to which Contracting States are Parties and which contains provisions on matters governed by the Convention, unless a contrary declaration is made by the States Parties to such instrument.

(2) This Convention does not affect the possibility for one or more Contracting States to conclude agreements which contain, in respect of children habitually resident in any of the States Parties to such agreements, provisions on matters governed by this Convention.

(3) Agreements to be concluded by one or more Contracting States on matters within the scope of this Convention do not affect, in the relationship of such States with other Contracting States, the application of the provisions of this Convention.

(4) The preceding paragraphs also apply to uniform laws based on special ties of a regional or other nature between the States concerned.

#### Article 53

(1) The Convention shall apply to measures only if they are taken in a State after the Convention has entered into force for that State.

(2) The Convention shall apply to the recognition and enforcement of measures taken after its entry into force as between the State where the measures have been taken and the requested State.

Article 54

(1) Any communication sent to the central authority or to another authority of a Contracting State shall be in the original language, and shall be accompanied by a translation into the official language or one of the official languages of the other State or, where that is not feasible, a translation into French or English.

(2) However, a Contracting State may, by making a reservation in accordance with Article 60, object to the use of either French or English, but not both.

Article 55

(1) A Contracting State may, in accordance with Article 60,

(a) reserve the jurisdiction of its authorities to take measures directed to the protection of property of a child situated on its territory;

(b) reserve the right not to recognise any parental responsibility or measure in so far as it is incompatible with any measure taken by its authorities in relation to that property.

(2) The reservation may be restricted to certain categories of property.

Article 56

The Secretary General of the Hague Conference on Private International Law shall at regular intervals convoke a Special Commission in order to review the practical operation of the Convention.

CHAPTER VII - FINAL CLAUSES

Article 57

(1) The Convention shall be open for signature by the States which were Members of the Hague Conference on Private International Law at the time of its Eighteenth Session.

(2) It shall be ratified, accepted or approved and the instruments of ratification, acceptance or approval shall be deposited with the Ministry of Foreign Affairs of the Kingdom of the Netherlands, depositary of the Convention.

Article 58

(1) Any other State may accede to the Convention after it has entered into force in accordance with Article 61, paragraph (1).

(2) The instrument of accession shall be deposited with the depositary.

(3) Such accession shall have effect only as regards the relations between the acceding State and those Contracting States which have not raised an objection to its accession in the six months after the receipt of the notification referred to in sub-paragraph (b) of Article 63. Such an objection may also be raised by States at the time when they ratify, accept or approve the Convention after an accession. Any such objection shall be notified to the depositary.

#### Article 59

(1) If a State has two or more territorial units in which different systems of law are applicable in relation to matters dealt with in this Convention, it may at the time of signature, ratification, acceptance, approval or accession declare that the Convention shall extend to all its territorial units or only to one or more of them and may modify this declaration by submitting another declaration at any time.

(2) Any such declaration shall be notified to the depositary and shall state expressly the territorial units to which the Convention applies.

(3) If a State makes no declaration under this Article, the Convention is to extend to all territorial units of that State.

#### Article 60

(1) Any State may, not later than the time of ratification, acceptance, approval or accession, or at the time of making a declaration in terms of Article 59, make one or both of the reservations provided for in Articles 54, paragraph (2), and 55. No other reservation shall be permitted.

(2) Any State may at any time withdraw a reservation it has made. The withdrawal shall be notified to the depositary.

(3) The reservation shall cease to have effect on the first day of the third calendar month after the notification referred to in the preceding paragraph.

#### Article 61

(1) The Convention shall enter into force on the first day of the month following the expiration of three months after the deposit of the third instrument of ratification, acceptance or approval referred to in Article 57.

(2) Thereafter the Convention shall enter into force -

(a) for each State ratifying, accepting or approving it subsequently, on the first day of the month following the expiration of three months after the deposit of its instrument of ratification, acceptance, approval or accession;

(b) for each State acceding, on the first day of the month following

the expiration of three months after the expiration of the period of six months provided in Article 58, paragraph (3);

(c) for a territorial unit to which the Convention has been extended in conformity with Article 59, on the first day of the month following the expiration of three months after the notification referred to in that Article.

#### Article 62

(1) A State Party to the Convention may denounce it by a notification in writing addressed to the depositary. The denunciation may be limited to certain territorial units to which the Convention applies.

(2) The denunciation takes effect on the first day of the month following the expiration of twelve months after the notification is received by the depositary. Where a longer period for the denunciation to take effect is specified in the notification, the denunciation takes effect upon the expiration of such longer period.

#### Article 63

The depositary shall notify the States Members of the Hague Conference on Private International Law and the States which have acceded in accordance with Article 58 of the following -

(a) the signatures, ratifications, acceptances and approvals referred to in Article 57;

(b) the accessions and objections raised to accessions referred to in Article 58;

(c) the date on which the Convention enters into force in accordance with Article 61;

(d) the declarations referred to in Articles 34, paragraph (2), and 59;

(e) the agreements referred to in Article 39;

(f) the reservations referred to in Articles 54, paragraph (2), and 55 and the withdrawals referred to in Article 60, paragraph (2);

(g) the denunciations referred to in Article 62.

In witness whereof the undersigned, being duly authorised thereto, have signed this Convention.

DONE at The Hague, on the 19th day of October 1996, in the English and French languages, both texts being equally authentic, in a single copy which shall

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be deposited in the archives of the Government of the Kingdom of the Netherlands, and of which a certified copy shall be sent, through diplomatic channels, to each of the States Members of the Hague Conference on Private International Law at the date of its Eighteenth Session.

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Passed by the House of Representatives at Sitting No. 294 of the 7th December, 2010.

MICHAEL FREND  
*Speaker*

PAULINE ABELA  
*Clerk to the House of Representatives*