International Parental Child Abduction: the Case of Egypt

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1 THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

Our contemporary world is witnessing a growing number of international parental child abductions as divorce rates have continued to rise. Because of the existing political and judicial differences between countries, and because of their differing societal views on men's and women's roles in society, child abduction cases, wherein the abductor tends to frustrate court proceedings regarding custody, have become a humanitarian issue that often presents difficulties. This has necessitated serious legal measures to be taken by the concerned states, at the international level, in order to address the growing concerns regarding the child abduction phenomenon. A significant measure among them is, of course, the Convention on the Civil Aspects of International Child Abduction of 1980 (known as the Hague Convention),1 which aimed at expediting the return of children to their home country after they had been wrongfully removed.

The Convention is a leading international instrument regulating aspects relating to child abduction within the jurisdiction of its member states. The main purpose of the Convention is to deter international child abduction and to provide a mechanism for the prompt return of abducted children to their home country so the courts there can resolve the custody issue on the merits. The application of the Convention is limited to children less than 16 years old who have been “habitually residing”2 in a contracting state immediately before the

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2 The Convention has not defined the term “habitual residence” and left its interpretation to the courts, which led to constant and excessive bantering over it.

In Friedrich v. Friedrich, the Sixth Circuit held that habitual residence must not be confused with domicile. To determine the habitual residence, the court must focus on the child, not the parents, and examine experience, not intentions. A person can have only
breach of custody or access rights and ceases to apply on the day when the child attains the age of 16. The Convention provides a simplified procedure for seeking the return of a child to its legal custodian. Each contracting state, under the treaty, sets up a “Central Authority” to serve as a liaison with the other contracting states. An aggrieved parent may then file an application with either the Central Authority of the home country or the country where the child is located. Upon application, the Central Authority must take all appropriate measures to discover the whereabouts of the child, prevent harm to the child, protect the interests of the lawful custodian or applicant, and secure the voluntary return of the child. Child welfare and the principle of best interest of the child – which were later firmly reassured by the Convention of the Rights of the Child – are given noticeable priority by the Convention.

Perhaps the most important of the Convention’s outcomes is the state parties’ agreement that a child who is habitually resident in a country that is a party to the Convention – and who is in another country that is also a party in breach of a parent’s rights of custody – shall, subject to certain exceptions, be promptly returned to the child’s country of habitual residence.

However, of its global object and dimensions, the scope of invoking the Convention is somewhat internationally limited. This is because it only applies within the jurisdiction of its contracting states. As a result, the Convention cannot be invoked unless the child is taken from a Hague Convention member state to another signatory member. Consequently, where a parent from a non-signatory nation unlawfully removes a child to a signatory country, there is no remedy available under the Hague Convention to the parent from the nation of origin.3

Non-Hague member states, therefore, are not legally constrained by the Convention. This means that non-member states would have considerable discretion when dealing with child abduction cases in their jurisdiction. The applicable rules in such cases would then be those of the prevailing national legal norms with a potential flexibility to consider other legal norms of international nature.

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In light of this, in *Mezo v. Elmegawi* (1994, EDNY. 855 F Supp 59; see also in *Re Mohsen* [1989, DC Wyo] 715 F Supp 1063) a mother’s action for an injunction ordering the Secretary of State to perform his duties under the Hague Convention was dismissed where the father took his children, who were in their mother’s custody, from the United States to Egypt. While the United States was a signatory to the Hague Convention, Egypt was not.