

Spring 2004

International Child Abduction to non-Hague Convention Countries: The need for an International Family Court

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Recommended Citation

Ericka A. Schnitzer-Reese, *International Child Abduction to non-Hague Convention Countries: The need for an International Family Court*, 2 NW. J. INT'L HUM. RTS. 1 (2004).
<http://scholarlycommons.law.northwestern.edu/njihr/vol2/iss1/7>

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INTERNATIONAL CHILD ABDUCTION TO NON-HAGUE CONVENTION COUNTRIES : THE NEED FOR AN INTERNATIONAL FAMILY COURT

We need an alternative source [when dealing with countries who are non-signatories to the Hague Child Abduction Convention]. I'm not a diplomat or law-enforcement officer. I am just a mom. But I had to learn how to talk to foreign authorities. It becomes an obsession. You want to know your child is safe . . .

– Maureen Dabbagh, mother of Nadia Dabbagh, abducted at the age of 3 to Syria, and later to Saudi Arabia, by her father, Hisham Dabbagh.¹

I. Introduction

¶1 Imagine that you are a young child. Your parents are divorced, which to you basically means that Mommy still lives with you, that you still have your bedroom and your toys. You are happy that you still go to your school and see your friends. Eventually you grow up and maintain strong relationships with both of your parents. This is a positive, and fairly common, picture of a divorced family in the United States today.

¶2 Now imagine that your Daddy speaks a different language from you, your Mommy, and your friend picks you up from your house, as he always does, but you drive to the airport. You get on an airplane and fly for so long that you fall asleep. When you wake up you are in a different country, surrounded by people your Daddy says are your relatives, but you don't know them, and you can't understand the language everyone is speaking. The streets and houses look different from your neighborhood at home. You ask your Daddy when you can go back home to your own room and your Mommy, but Daddy tells you that this is your home now, and Mommy won't be with you anymore. You are confused, lonely, and afraid.

¶3 This is the frightening reality for an ever-increasing number of children, often in the center of divorce. The actual number may well be higher due to the likelihood of unreported cases. International child abduction by a parent is a crime that very frequently goes unpunished and unchecked, and can destroy the abducted child's sense of security, well-being, and happiness. These abductions arise out of a variety of circumstances, but they often involve clashes of cultural, religious, and social norms, particularly when the parents are

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¹ Timothy W. Maier, *Kids Held Hostage*, INSIGHT MAG., March 9, 1998, available at <http://www.insightmag.com/main.cfm?include=detail&storyid=215281>

² See 2003 Report to Congress on International Child Abductions/Report to Congress on International Child Abductions in Response to the Statement of Managers Accompanying F-103 Omnibus Appropriations Bill P.L. 108-7, available at http://travel.state.gov/2003_Hague_Compliance_Report.html.

of different nationalities or religions. When cultures clash, the legal ramifications are serious—and seriously difficult to navigate: when a child is abducted across international borders, the countries and parties involved often have significantly divergent legal systems and religious and cultural mores. This results in a failure to protect the left-behind parent and the child, both of whom have little recourse under present international law.

¶4 Nowhere else is this clash of cultural and legal norms as evident as in the cases of international child abduction under Islamic law. Such abductions escape the current reach of international law on child abduction, and subsequently give rise to a difficult and heretofore legally unresolvable situation. Of the 904 known unresolved cases of international parental child abduction to the U.S. government, approximately twenty-five percent involve countries under whose legal systems family law is governed by *Shari'a*.³ Few solutions to the problem of these specific abductions have been proposed, and the result is a gaping hole in the prosecution of international child abduction and protection of children's rights.

¶5 Part I of this article will briefly examine the history of international parental child abduction, discuss the International Child Abduction of 1980. The Hague Convention is essentially useless in situations where a child is abducted to a country with a substantially Muslim population, as only two such countries, Turkey and Bosnia,⁴ are party to the Convention.⁵ This section will examine the reasons why North African and Middle Eastern⁶ countries utilizing *Shari'a*-based family law are reluctant to sign on to the convention, discussing

3 *Id.*

4 Approximately forty percent of Bosnia's population is Muslim. *See* <http://www.cia.gov/cia/publications/factbook/geos/bk.html>.

5 The Convention applies in the following States or territories as a result of ratification, acceptance, or approval: Argentina, Australia (only for the Australian States and mainland Territories), Austria, Belgium, Bosnia and Herzegovina, Canada, China - Hong Kong Special Administrative Region Only, China - Macau Special Administrative Region Only, Croatia, Czech Republic, Denmark (except the Faroe Islands and Greenland), Finland, Former Yugoslav Republic of Macedonia, France (for the whole of the territory of the French Republic), Germany, Greece, Ireland, Israel, Italy, Luxembourg, Netherlands (for the Kingdom in Europe), Norway, Portugal, Serbia and Montenegro, Slovakia, Spain, Sweden, Switzerland, Turkey, United Kingdom of Great Britain and Northern Ireland, Isle of Man, Cayman Islands, Falkland Islands, Montserrat, Bermuda, United States of America, and Venezuela. The Convention also applies in the following States or territories as a result of accession: Bahamas, Belarus, Belize, Brazil, Bulgaria, Burkina Faso, Chile, Colombia, Costa Rica, Cyprus, Ecuador, El Salvador, Estonia, Fiji, Georgia, Guatemala, Honduras, Hungary, Iceland, Latvia, Lithuania, Malta, Mauritius, Mexico, Republic of Moldova, Monaco, New Zealand, Nicaragua, Panama, Paraguay, Peru, Poland, Romania, Saint Kitts and Nevis, Slovenia, South Africa, Sri Lanka, Thailand, Trinidad and Tobago, Turkmenistan, Uruguay, Uzbekistan, and Zimbabwe. Hague Conference on Private International Law, Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction, *available at* <http://www.hcch.net/e/status/abdshte.html#ratifications> (last visited Nov. 19, 2003).

6 Although the Muslim world includes countries encompassing a wide and diverse cultural and ethnic swath of land from North Africa to Southeast Asia, this paper will focus its scope on Muslim-majority countries in North Africa and the Middle East, which share a relatively common Arab social and linguistic culture. However, it is important to note that significant Muslim populations also exist in Central Asia, South Asia, Southeast Asia, and Sub-Saharan Africa.

issues of religion, culture, and the place of women and children in Islamic societies. Part III will analyze the few options available when a child is abducted from the United States to a non-Hague country, namely: (1) the International Parental Kidnapping Crime Act of 1993 (IPKCA);⁷ (2) diplomatic intervention; (3) re-abduction; and (4) utilization of the U.N. Convention on the Rights of the Child,⁸ to which many *Shari'a*-based family law countries are party. Part IV will propose a new, viable alternative option in dealing with international parental child abductions, whether they are to Hague or non-Hague countries: an International Family Court. Comprised of judges representing a wide array of countries, cultures, religions and legal systems, the International Family Court would be an unbiased clearinghouse where multiple views on religion, divorce, and custody would be respected and considered in adjudicating international child abduction cases, custody cases, even divorce cases.

II. *A History International Child Abduction*

¶6 In the 1970's, incidents of international child abduction were on the increase as marriages between were between people of similar ethnic and religious backgrounds (for example, a Catholic European-American woman and a Catholic German man), the 1960's and 1970's gave rise to marriages between people of different religious, ethnic, and cultural groups in unprecedented numbers.¹⁰

¶7 A subset of these marriages was between men from North African and Middle Eastern, Muslim-m developed relationships with their fellow students. Along with the regular challenges any marriage faces, the spouses in these marriages have to contend with the additional challenge of negotiating their religious and cultural differences, made all the more evident once they have children. Under which religion should their child be raised? What languages should the child learn? How can the child have a relationship with grandparents and family members that live thousands of miles away, in a completely foreign culture? Will the family visit relatives in the foreign country? How frequently? What will the conditions and reception in the country be like for the non-Muslim wife?

¶8 While these questions were, and are, dealt with successfully by many inter-religious/international legal rights in custody dispute situations. Which country's laws should govern in determining child custody in international relationships? The country in which the child was born? The country in which the child resides? What if the family had spent time in the mother's and the father's home countries, both or one of which the child was a citizen? *And finally, what if one parent abducts the child and takes the child to a country where the child does not regularly live?* Recognizing the multiplicity and degree of complexity of this last question, the Hague Convention on the Civil Aspects of

7 18 U.S.C. § 1204 (1993).

8 Convention on the Rights of the Child, Nov. 20, 1984, G.A. Res. 44125, 44 U.N. GAOR 3d Comm.

9 Lisa Nakdai, It's 10 P.M., Do You Know Where Your Children are?: The Hague Convention on the Civil Aspects of International Child Abduction, 40 FAM. CT.. REV. 251, 252 (2002).

10 *Id.*

International Child Abduction of 1980 provided the world community with an initial, much-needed legal framework to safeguard the rights of children abducted, usually by one of his or her parents, to a foreign country.¹¹

III. The Hague Convention on the Civil Aspects of International Child Abduction of 1980: How it Works, and How it Doesn't Work

A. Understanding the Hague Convention

¶9 Approved unanimously by the twenty-three member states at the Fourteenth Session of the Hague countries—Israel and Turkey—are located in the North African/Middle Eastern region.¹⁴ Much has been written on the Hague Convention—its flaws and its successes, its effectiveness and utilization.¹⁵ The goal of the Convention is “to secure the prompt return of children wrongfully removed to or retained in one Contracting State”¹⁶ and “to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States.”¹⁷ “Wrongful removal” exists when the left-behind parent’s custody rights have been violated,¹⁸ and the child must be removed from his or her “habitual residence” in order to fall within the scope of the Hague Convention.¹⁹ Recognizing a need for empathy, the Hague Convention attempts to minimize the negative psychological effects of abduction by quickly returning the child and allowing the culture with which the child has the most familiarity to determine decisions of custody and, therefore, the child’s future.

11 “The States signatory to the [Hague Convention on the Civil Aspects of International Child Abduction], Firmly convinced that the interests of children are of paramount importance in matters relating to their custody, Desiring to protect children internationally from the harmful effects of their wrongful removal or retention and to establish procedures to ensure their prompt return to the State of their habitual residence, as well as to secure protection for rights of access, Have resolved to conclude a Convention to this effect . . .” Convention on Civil Aspects of International Child Abduction, Oct. 25, 1980, 1343 U.N.T.S. 89 (hereafter “Hague Convention”).

12 *See supra* note 5.

13 *Id.*

14 Bosnia, a substantially Muslim country, is party to the Hague Convention. Two other Muslim-majority countries in other parts of the world are bound by accession to the Hague Convention; these countries are Turkmenistan and Uzbekistan in Central Asia.

15 See, e.g., Kerri Smetzer Mast, Comment, The Application of the Fundamental Principles Exception of the Hague Convention on the Civil Aspects of International Child Abduction, 17 EMORY INT’L L. REV. 241 (2003); Lisa Nakdai, *supra* note 9; Gloria Folger DeHart, The Relationship between the 1980 Child Abduction Convention and the 1996 Protection Convention, 33 N.Y.U. J. INT’L L. & POL. 83 (2000).

16 Hague Convention, *supra* note 4, at art. 1(a).

17 *Id.* at art. 1(b).

18 Linda Silberman, The Hague Child Abduction Convention Turns Twenty: Gender Politics and Other Issues, 33 N.Y.U. J. INT’L L. & POL. 221, 225 (2000).

19 Hague Convention, *supra* note 4, at art. 4.

¶ 10 The Convention, therefore, is a return mechanism that does not seek to resolve custody issues or prevent the abducting parent from seeking a more favorable custody decision in a different country²¹—often a country where the abducting parent has citizenship, other family members, or a common (i.e., empathetic) ethnic or religious community.

¶ 11 While the Hague Convention has its problems,²² it is at present the only piece of international leg

¶ 12 However, the Convention has been ratified by less than one-sixth of the world's countries, only eight of which are non-European.²³ The reality of the Convention's reach resembles a fishing net permeated with large holes: cast this net and you *might* catch some fish, but it is more likely that the fish will swim out through the readily available holes. The holes of the net represent those countries which are not party to the Convention; the fish are the abducting parents, and they swim, abducted kids in tow, directly towards the holes, where they in fact find protection from the world community that seeks to prosecute them. No Middle Eastern or North African countries, other than Israel, are party to the Hague Convention. This situation simultaneously provides a safe haven for the abducting parent, and a legal black hole for the child and the left-behind parent.

B. Beyond the Scope of the Hague Convention: Muslim-majority Nations in North Africa and the Middle East

¶ 13 Aside from some bilateral treaties between a few Muslim-majority countries and European nation were to non-Hague-signatory North African or Middle Eastern countries.²⁵ Thus, there is a gaping hole in the overall ability to protect the rights of internationally abducted children. These countries are “safe harbors” that have historically allowed abducting Muslim fathers to evade international authority and essentially get away with the kidnapping of their child. Therefore, if a child is abducted to a country relying upon *Shari'a* in family law matters by his or her father, there is currently little recourse—legal or otherwise—available to the left-behind mother. Why is this the case? Women and

20 *Id.* at art. 19 (“A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.”)

21 Nakdai, *supra* note 9, at 253.

22 For example, Article 12 establishes a one-year period during which the left-behind parent must locate the child and file a petition under the Hague Convention. This can be a difficult endeavor, as the abducting parent and child may be in hiding, using unknown false identities, etc. Other exceptions in Articles 13 and 20 create inconsistencies and difficulties in applying the Hague Convention and have been discussed elsewhere; see Nakdai, *supra* note 9; Tom Harper, *The Limitations of the Hague Convention and Alternative Remedies for a Parent Including Re-Abduction*, 9 EMORY INT'L LAW REV. 257 (1995).

23 However, the Hague Convention binds forty percent of the world's countries through accession. Of these eighty countries, only five (Turkey, Bosnia, Burkina Faso, Turkmenistan, and Uzbekistan) have a Muslim population over twenty percent, and only one (Turkey) is located in the North African/Middle Eastern Region.

24 France, for example, has bilateral treaties concerning international parental child abduction with several Islamically-governed countries including Algeria and Morocco. See ANNE-MARIE HUTCHINSON, INTERNATIONAL PARENTAL CHILD ABDUCTION 62, 141.

25 Tom Harper, *supra* note 22, at 266 (citing Jack Kelley, *Foreign Abductions Get Congress' Attention*, USA TODAY, Aug. 30, 1993, at A6).

children in Muslim-majority countries have severely limited legal rights, particularly as applied to divorce, custody, visitation, and travel.²⁶ It is unlikely that these countries will ratify the Hague Convention as it currently stands since adhering to the Convention would potentially force these countries to contravene their own laws.

1. Elements of Islamic Law Relevant to International Child Abduction

¶ 14 The religious and socio-cultural specifics of North African and Middle Eastern society strongly s when dealing with family law issues such as marriage, divorce, and child custody. *Shari'a* is believed to be divine law, and is comprised of four sources, including the word of God, Allah, as spoken through his prophet, Muhammad and preserved in the Qur'an and hadith, collections of Muhammad's sayings.²⁷ Considered an intrinsic part of one's identity as a Muslim, *Shari'a* is also a personal code by which one is expected to lead his or her life, regardless of one's nationality or regular domicile. *Shari'a* thus "draws no distinction between the religious and the secular, between legal, ethical, and moral questions, or between the public and private aspects of a Muslim's life."²⁸ Abdullahi Ahmed An-Naim, a legal scholar who has written extensively on the topic of Human Rights and Islam, notes the depth with which normative religious concepts permeate legal systems in Muslim-majority countries, even those who do not outwardly profess to be Islamic republics:

[i]t is important to note that Islamic norms may be more influential at an informal, almost subconscious psychological level than they are at the official legal or policy level. One should not therefore underestimate the Islamic factor simply because the particular state is not constituted as an Islamic state, or because its legal system does not purport to comply with . . . *Shari'a*. . . . This is particularly important from a human rights point of view where underlying social and political attitudes and values may defeat or frustrate the declared policy and formal legal principles.²⁹

26 The unequal legal and societal status of women and children in countries utilizing *Shari'a* as their primary legal code (and whether it should be tolerated by the international community) gives rise to issues of cultural relativism. While this topic is somewhat beyond the scope of this article, it is a reality in dealing with Human Rights issues within the Islamic world, highlighting the need not only for diplomatic dialogue, but socio-cultural and inter-religious dialogue.

27 See JOHN L. ESPOSITO, WOMEN IN MUSLIM FAMILY LAW 3-10 (1982) (identifying and elaborating on four main sources of Islamic law: the Qur'an, Sunna (or Prophetic example), *qiyas* (analogical reasoning), and *ijma* (community consensus)).

28 Bharathi Anandhi Venkatraman, Comment, Islamic States and the United Nations Convention on the Elimination of All Forms of Discrimination Against Women: Are the Shari'a and the Convention Compatible?. 44 AM. U. L. REV. 1949, 1964 (1995) (citing KEITH HODKINSON, MUSLIM FAMILY LAW: A SOURCEBOOK 1 (1984)).

29 A.A. An-Naim, *Islam, Islamic Law, and the Dilemma of Cultural Legitimacy for Universal Human Rights*, in C.E. WELCH, JR., & V.A. LEARY, ASIAN PERSPECTIVES ON HUMAN RIGHTS 31-32 (1990).

¶ 15 In most North African and Middle Eastern countries, therefore, there is little separation of religion *inter alia*, criminal law, international, and human rights law (considered to be in the public domain) and religious practice, personal conduct, and family law (considered to be in the private domain).³¹ Islamic family law with respect to children is generally divided into a tripartite structure: (1) infancy; (2) guardianship of education; and (3) guardianship of property.³²

¶ 16 Care of a child, which falls within the infancy stage, is called *hadana*. Under Islamic law, the mothers are normally drawn from the mother's female relatives.³⁴ Depending on the school of Islam, the temporal period of custody may run as short as two years of age for boys, or as long as up to the age of marriage for girls.³⁵ Guardianship of education and property are exclusively the domain of the father or other male relatives.³⁶ In order to be awarded custody, the parent must show that they are mentally able to care for the child as well as capable of "safeguarding the child's interests."³⁷ Herein lies the crux of Islamic custody law: what are the child's interests?

¶ 17 A child born to a Muslim parent (mother or father) is, under *Shari'a*, a Muslim. A Muslim father's best interests of the child . . . frequently corresponds with an upbringing under the *Shari'a*.³⁸ This "religiously-based 'best interests' standard"³⁹ has pointed ramifications in abduction and custody cases involving Muslim fathers and non-Muslim mothers; it is often the issue upon which abduction and custody disputes within the Islamic legal system turn:

Muslim countries determine the best interests of the child according to religious and social values, and this typically leads [their] courts to conclude that it falls within the best interests of the child to have the child raised in the . . . nation or in its respective

30 A good illustration of the official/subconscious structure An-Naim proposes in *supra* note 29, can be found in Turkey, a country with a majority Muslim population that has adopted a secular government yet finds itself in a steady struggle to balance secular governance with its population's strong identification with its Muslim history and identity.

31 Venkatraman, *supra* note 28, at 1971. Note, however, that the boundaries between these public and private elements of law are often blurred.

32 Hutchinson, *supra* note 24, at 16.

33 *Id.* at 18.

34 *Id.* at 16.

35 *Id.* at 18.

36 *Id.* at 16.

37 *Id.* at 17.

38 Danielle M. Andrews, Note, Non-Muslim Mothers V. Egyptian Muslim Fathers: The Conflict Between Religion and Law in International Child Custody Disputes and Abductions, 23 SUFFOLK TRANSNAT'L L. REV. 595, 608 (2000) (citing Monica E. Henderson, Note, U.S. State Court Review of Islamic Law Custody Decrees-When Are Islamic Custody Decrees in the Child's Best Interest?, 36 BRANDEIS J. FAM. L. 423, 426-28 (1998)).

39 Andrews, *supra* note 38, at 608.

culture. . . . These cultural biases and . . . laws in Islamic countries raise obstacles to [non-Muslim,] foreign parents.⁴⁰

It would therefore be rare that a court in a Muslim-majority country relying on *Shari'a* for matters of family law would award custody or demand the return of a child to a non-Muslim mother over a Muslim father in a Muslim-majority country if the legal definition of the child's interest is to be raised as a Muslim.

2. *Obstacles to Muslim Acceptance of the Hague Convention*

¶ 18 As articulated by legal ethnographer June Starr, resolution of abduction cases involving a non-Muslim parent (and a court of law) is at stake: Under which religion and culture should the child be raised?⁴²

According to the *Shari'a*, a child is considered to be a Muslim regardless of which parent, mother or father, is Muslim, and the child must be raised as a Muslim. By a parent or a court outside of an Islamic state, however, the child may be viewed as a non-Muslim, or a half-Muslim, and therefore as having the right to be raised in the non-Muslim parent's culture or religion. This is of course in direct conflict with *Shari'a*, and a Muslim-majority country basing its legal system on *Shari'a* would therefore never sign on to a convention, such as the Hague Convention, that might result in an outcome which is against Islamic law.

¶ 19 Since they are concerned with Human Rights, conventions, including, *inter alia*, the Convention implicitly require that states parties "impact both extra-governmental, private conduct as well as public law in signatory states."⁴⁵ As mentioned earlier, *Shari'a* seeks to maintain a division between private and public categories of law,⁴⁶ and while "[m]any Islamic nations . . . [will adopt] secular Western norms in the realm of public law, . . . [they will continue] to follow the *Shari'a* in matters of personal status or private law."⁴⁷ While both public and private law reform has occurred in Muslim-majority countries, private law reform has often been weak and difficult to enforce, particularly when it relates to women's and children's rights.⁴⁸ Therefore, as argued similarly by Bharathi Venkatraman,⁴⁹ when *Shari'a* is in contradiction with human rights convention provisions, it is extremely difficult for an Islamic nation to find a way to uphold such

40 *Id.* at n.70 (citing Lara Cardin, Comment, The Hague Convention on the Civil Aspects of International Child Abduction As Applied to Non-Signatory Nations: Getting to Square One, 20 HOUS. J. INT'L L. 141, 157-158 (1997)).

41 June Starr, The Global Battlefield: Culture and International Child Custody Disputes at the Century's End, 15 ARIZ. J. INT'L & COMP. LAW 791, 806 (1998).

42 *Id.* at 806.

43 G.A. Res. 34/180, U.N. GAOR, 34th Sess., Supp. No. 46, at 193, U.N. Doc. A/34/46 (1979).

44 Convention on the Rights of the Child, *supra* note 8.

45 Venkatraman, *supra* note 28, at 1971.

46 *See supra* note 28.

47 Venkatraman, *supra* note 28, at 1971-72.

48 *Id.* at 1972.

49 *Id.*

provisions absent the taking of reservations, which often flout the rights the convention seeks to ensure.

IV. Legal Recourse Available to an American Parent when a Child is Abducted to a non-Hague Country

¶ 20 Current options for left-behind mothers whose children have been abducted to non-Hague countries are limited by the Rights of the Child.

A. The IPKCA

¶ 21 While the Hague Convention provides a civil remedy for international child abduction cases, the crime, punishable by up to three years of imprisonment and fines if the child is not returned:

whoever removes a child from the United States or retains a child (who has been in the United States) outside the United States with intent to obstruct the lawful exercise of parental rights shall be fined under this title or imprisoned not more than 3 years, or both. The term "child" means a person who has not attained the age of 16 years; "parental rights" with respect to a child, means the right to physical custody of the child—whether joint or sole and includes visiting rights, arising by operation of law, court order, or legally binding agreement of the parties.⁵²

In addition, imprisonment beyond the initial sentence is possible if the abducting parent continues to refuse to return the child.

¶ 22 Although there have been some convictions under the IPKCA,⁵³ it unfortunately can rarely be utilized, albeit weakly, as a deterrent to future abductions. Success of the IPKCA is entirely dependent on the ability of the United States to arrest the abducting parent, a feat which is nearly impossible if the parent is a father living and/or hiding in an Islamic country. Further, under Islamic law, a Muslim abducting father has done nothing wrong, since it generally prefers the father in cases of child custody beyond infancy; he is also acting to ensure that the child be raised a Muslim, which, as discussed earlier, is sanctioned under *Shari'a*.

¶ 23 These legal realities, coupled with the currently anti-U.S. sentiment in many North African and Middle Eastern countries, address these issues in an analysis of *United States v. Ahmed Amer*,⁵⁵ the first case to be

50 18 USC § 1204 (1998).

51 Jacqueline D. Golub, The International Parental Kidnapping Crime Act of 1993: The United States' Attempt to Get our Children Back – Is It Working?, 24 BROOK. J. INT'L L. 797 (1997).

52 18 USC § 1204(a)-(b) (1998).

53 Between 1993-1998, there were sixty-two indictments under the IPKCA but only thirteen convictions. Timothy A. Maier, *Justice Ignores Stolen Kids*, INSIGHT MAG., Nov. 29, 1999, available at <http://www.insightmag.com/main.cfm?include=detail&storyid=208345>.

54 Golub, *supra* note 51, at 798.

55 *United States v. Ahmed Amer*, 110 F.3d 873 (2d Cir. 1997).

decided under the IPKCA.⁵⁶ Golub recognizes that the IPKCA often fails due to problems with extradition of the abducting parent,⁵⁷ which would lead one to develop ideas on how to cure this extradition problem in order to enable the IPKCA to work more effectively. Berndt's agenda is to urge the U.S. to strongly enforce the IPKCA, as she views it as a viable solution to the international child abduction to non-Hague countries problem; however, she insightfully alludes to the idea that cultural particularities may impede the success of IPKCA as they have the Hague Convention, which is a rigid reality.⁵⁸

B. Diplomatic and Legislative Intervention

1. *Bilateral Treaties*

¶ 24 It has been suggested that the United States initiate country-specific, bilateral treaties with non-H country's legal system inherently conflicts with the structure of the Hague Convention, "alternative bilateral consular arrangements that...fall short of the wide range of responsibilities Hague compliance would require [might be viable]."⁶⁰ The State Department has indicated that they have begun to discuss this with "several countries in the Middle East."⁶¹ There are several problems with this scenario. First, it is possible that some of the religious/cultural specifics of Middle Eastern law and society may not be reconcilable under a bilateral treaty since Muslim and U.S. law on divorce, custody, and children's and women's rights conflict at their core.⁶² Secondly, if the U.S. were to rely primarily on bilateral treaties in order to establish protocols for international child abduction cases, the danger of inconsistencies among such treaties could further undermine relations in a region where anti-American sentiment is on the rise.⁶³ Inconsistent treaty policies might also lead abducting parents to seek out countries with which the U.S. has less stringent treaty provisions in order to reduce the likelihood of

56 *Id.*; see also Caroline Berndt, *United States v. Amer and the International Parental Kidnapping Crime Act - The Final Answer to the Problem of International Parental Abductions*, 23 N.C. J. INT'L L. & COM. REG. 405 (1998). There appear to be a small number of cases tried under the IPKCA, including *United States v. Alahmad*, 211 F.3d 538 (10th Cir. 2000); *United States v. Ventre* 338 F.3d 1047 (9th Cir. 2000); *United States v. Fazal* 203 F. Supp. 2d 33 (Mass. 2002).

57 Golub, *supra* note 51, at 821.

58 Berndt, *supra* note 56, at 445.

59 Harper, *supra* note 22, at 280.

60 2003 Report to Congress on International Child Abductions/Report to Congress on International Child Abductions in Response to the Statement of Managers Accompanying F-103 Omnibus Appropriations Bill P.L. 108-7, available at http://travel.state.gov/2003_Hague_Compliance_Report.html.

61 *Id.*

62 Note again, however, that France has bilateral treaties concerning international parental child abduction with several Islamically-governed countries including Algeria and Morocco. See Hutchinson, *supra* note 24, at 141.

63 For example, if the U.S. were to allow for less stringent policies in a treaty with Middle Eastern country "X" than in a treaty with Middle Eastern country "Y" due to political or economic/trade pressures, country "Y" would likely harbor resentment against the U.S., citing assertions of favoritism or distrust.

legal ramifications resulting from their act of abduction.⁶⁴ Thirdly, bilateral treaties would still result in holes in the net—the U.S. does not have diplomatic relations with a number of Muslim countries, and parental abductors fleeing to those countries would still find a safe haven. Bilateral treaties, however, could certainly reduce the number of unresolved international parental abduction cases, and could also play a substantial role in mending and building international relations between the U.S. and Muslim countries. In addition, bilateral treaties could also ensure that human rights issues remain on the political and social agenda in Muslim countries, where significant violations still occur regularly.

2. *Other Types of Diplomatic Intervention*

¶ 25 A number of additional diplomatic/legislative steps have been taken in an attempt to address the father in the mid-1980's and taken to Saudi Arabia:⁶⁵ (1) The International Religious Persecution Act (IRPA)⁶⁶ prosecutes kidnapping for forced religious conversion of minors taken abroad; and (2) an amendment denying U.S. visas to family members of parental child abductors.⁶⁷ The IRPA legislation does not guarantee the return of the child unless the country to which the child has been abducted is willing to cooperate, resulting in a fairly unenforceable law. The visa denial amendment is more promising, but it only applies if the abducting parent's family seeks to travel to the United States.⁶⁸ The abducting family surely would take all possible steps to avoid the need to travel to the United States.

¶ 26 Other legislative measures that touch on the issue of International Child Abduction/Kidnapping is inapplicable to non-Hague cases. The Uniform Child Custody Jurisdiction Act (UCCJA) has some international application as it can be used to determine where a custody hearing should take place based on the child's habitual or home residence.⁷⁰ Like the Hague Convention, the UCCJA upholds the standard that the child's custody hearings should be held in the jurisdiction of the habitual residence of the child. However, like the other

64 Although most international parental kidnapers tend to go to their country of origin, there are cases of abducting parents traveling from country to country in order to evade the left-behind parent, most notably that of Maureen Dabbagh, whose daughter, Nadia, had been taken to Syria and then Saudi Arabia by her father. See <http://www.allandetrinch.com/maureenstory.htm>.

65 Maier, *supra* note 1.

66 The International Religious Persecution Act (S. 1868) was passed in October 1998 by Congress. This act "would create an ambassador-at-large in the State Department to monitor and report on the status of religious persecution around the world. Based on [these reports], countries found to be persecuting religious minorities would be subject to sanctions on non-humanitarian aid." See <http://www.rac.org/legislate/101398.html>.

67 Maier, *supra* note 1. Democratic Senator Diane Feinstein of California attached the visa denial amendment to an omnibus spending bill (HR4328) in 1998.

68 The idea for the visa denial bill emerged after Ms. Roush's in-laws sought a visa for medical treatment in the U.S. while her daughters remained in Saudi Arabia.

69 See 42 U.S.C.S. § 11603 (2000).

70 The UCCJA has been adopted by all fifty states, but the international application of the law is not valid in Missouri, Ohio, Oregon, New Mexico, South Dakota, and Indiana. Starr, *supra* note 41, at 803.

legislation discussed, the UCCJA does not provide for an internationally mandated return of the child.

C. Re-abduction

¶ 27 Re-abduction, where the left-behind parent tries him- or herself or hires mercenaries to “re-kidnap” the left-behind parent to criminal prosecution. Re-abductions often fail and, in Muslim-majority countries, the penalty of death is attached to the perpetrator of such a crime.⁷¹ Although there are numerous private security companies in the United States and Europe that offer re-abduction services,⁷² re-abduction is not a realistic option for left-behind parents as it is illegal, dangerous, and could potentially result in worsening the situation for both the left-behind parent and the abducted child.⁷³

D. Utilization of the United Nations’ Convention on the Rights of the Child of 1989 (UNCRC)

¶ 28 Utilization of the Convention on the Rights of the Child is perhaps the most promising vehicle to date. Brian Kenworthy and Rhona Schuz both analyze the UNCRC in light of the Hague Convention, and Shawronda Higgins-Thornton argues for a reworking of the Hague Convention, utilizing the UNCRC.⁷⁴ The UNCRC has been ratified by all countries, including those governed under Islamic law, except for the United States and Somalia, which have indicated their intent to ratify by becoming signatories to the UNCRC.

¶ 29 Some, but not all, of the North African and Middle Eastern countries have taken a blanket reservation. These articles give effect to consideration of a child’s “best interests,” which are defined as the right to be cared for by and to maintain contact with their parents, the right for children and their parents to leave and enter their country *for the purpose of maintaining contact with one another*, and the right for children to be *heard* and to *participate in matters that affect their lives*.

71 Harper, *supra* note 22, at 269 (citing Jack Kelley, *The Man Behind the Disguise*, USA TODAY, Aug. 30, 1993, at A6).

72 See, for example, IFRS Group, based in California, at <http://www.ifrsgroup.com/childkidnap.html>; Zamora and Associates, based in Washington, D.C. and The Hague, at <http://www.zamora.nl/introduction.html>; Trojan Securities, founded by “former elite British military personnel . . .” and based in Arkansas, at <http://www.trojansecurities.com>.

73 In and of itself, re-abduction is an interesting subject, and Tom Harper’s article, *The Limitations of the Hague Convention and Alternative Remedies for a Parent Including Re-Abduction*, discusses the ramifications and liabilities for a re-abducting parent quite thoroughly. Harper, *supra* note 22.

74 See Brian Kenworthy, *The Un-Common Law: Emerging Differences Between the United States and the United Kingdom on the Children’s Rights Aspects of the Hague Convention on International Child Abduction*, 12 *IND. INT’L & COMP. L. REV.* 329 (2002); Rhona Schuz, *The Hague Child Abduction Convention and Children’s Rights*, 12 *TRANSNAT’L L. & CONTEMP. PROBS.* 393 (2002); Shawronda Higgins-Thornton, *Innocence Snatched: A Call for a Multinational Response to Child Abduction that Facilitates Sexual Exploitation*, 31 *GA. J. INT’L & COMP. L.* 619 (2003).

75 See http://www.unhcr.ch/html/menu3/b/treaty15_asp.htm for a listing of each signatory country’s declarations and reservations to the UNCRC.

¶ 30 It could be argued that these rights are all violated by international parental child abduction. Rho cases.⁷⁶ Building on this idea, Martha Bailey argues that “if a . . . parent removes a child in violation of an order, agreement, or law and is not ordered to return the child in order to have the issue adjudicated in the country of the child's habitual residence, then, arguably, the child is deprived of her or his rights [to not be separated from her or his parents against their will] under the Convention on the Rights of the Child.”⁷⁷ Since Muslim-majority signatories to the UNCRC are bound to uphold these rights, one might argue that they are subsequently bound to return children abducted to their countries to the left-behind parent for further legal resolution. June Starr, in an analysis of seven custody/abduction cases involving non-Hague parties, points out the glaring lack of the U.S. justice system to utilize the UNCRC: “[m]any of the Muslim custody cases heard in U.S. courts violate one or more Articles of the Convention on the Rights of the Child. It is ‘as if’ the United Nations had never drafted the Resolution.”⁷⁸ However, the United States has only signed the UNCRC, it has not yet ratified it; therefore it is not bound to uphold the provisions of the treaty. Further, Ms. Starr does not offer an approach through which courts, foreign or domestic, could enforce the UNCRC provisions.

¶ 31 How best to utilize the UNCRC then? Cara Finan suggests that the UNCRC act as an “international executive. How would the return of the child be guaranteed? How would subsequent decisions of custody and visitation be handled?”

V. *The International Family Court (IFC)*

¶ 32 Abductions to Muslim-majority countries that incorporate *Shari'a* into their legal systems touch on the court is foreign: “Do we trust the foreign courts in cases of cultural conflict, when the foreign courts represent a particular culture? [H]ow much can we trust foreign courts if the issue goes beyond ‘pure’ custody and into the realm of cultural and religious differences?”⁸⁰ Are courts qualified to make such decisions? These questions raise what I believe to be the crux of the issue surrounding parental child abductions to Muslim-majority countries: how can issues of cultural and religious difference be fairly, and effectively adjudicated?

¶ 33 I propose taking Ms. Finan’s concept of the UNCRC forum a step further, establishing instead an international family court in Muslim-majority countries to recognize and enforce children’s rights is valid and insightful, and could result in gaining the participation of these countries in an international family court if it were attached to the UNCRC. However, this would require amending the UNCRC in

76 Schuz, *supra* note 74, at 403. Ms. Schuz elaborated further on this statement, expressing her view that “the fact that there are a number of articles of the U.N. Convention referring to contact between the child and his parents supports the idea that this is a separate right.” Personal communication, Nov. 25, 2003.

77 Martha Bailey, *The Right of a Non-Custodial Parent to an Order for Return of a Child under the Hague Convention*, 13 CAN. J. FAM. LAW 287, 301 (1996).

78 Starr, *supra* note 41, at 831.

79 Cara L. Finan, *Convention on the Rights of the Child: A Potentially Effective Remedy in Cases of International Child Abduction*, 34 SANTA CLARA L. REV. 1007, 1035-38 (1994).

80 Starr, *supra* note 41, at 807.

accordance with Article 50,⁸¹ which in turn requires separate ratification, which could not be guaranteed. And further, there are some countries (Saudi Arabia among them) that have taken a blanket reservation to the UNCRC “with respect to all such articles as are in conflict with the provisions of Islamic law.”⁸² The challenge in establishing an international family court would therefore be securing the participation and involvement of Muslim-majority nations. Given the specifics of *Shari’a* that are incompatible with many non-Muslim systems of law, including many international human rights mechanisms, why would Muslim-majority countries be willing to join an international family court? Such a court would have to be structured so as to respect and value the perspectives of all cultures and legal systems, which would be no small task. If international child abductions *from* Muslim-majority countries were substantial in number, those countries would likely have an interest in pursuing an international forum where cases could be heard. Statistics on abductions of children from Muslim-majority countries are difficult to locate, but according to Interpol’s limited database of two-hundred abducted children, eleven of these children have been abducted from Muslim-majority countries including Egypt, Iraq, Jordan, Syria, and Uzbekistan.⁸³ Further research into this area would be an essential step for proponents of an international family court, as it presents the strongest motivation Muslim-majorities would have to support such an international forum.

¶ 34 International courts such as the International Court of Justice (ICJ) and the International Criminal [International Court of Justice.]”⁸⁴ Egypt is the only North African or Middle Eastern

81 Article 50(1) of the UNCRC sets forth the amendment process as follows: “Any State Party may propose an amendment and file it with the Secretary-General of the United Nations. The Secretary-General shall thereupon communicate the proposed amendment to States Parties, with a request that they indicate whether they favour a conference of States Parties for the purpose of considering and voting upon the proposals. In the event that, within four months from the date of such communication, at least one third of the States Parties favour such a conference, the Secretary-General shall convene the conference under the auspices of the United Nations. Any amendment adopted by a majority of States Parties present and voting at the conference shall be submitted to the General Assembly for approval.” See <http://www.unhchr.ch/html/menu3/b/k2crc.htm>.

82 See http://www.unhchr.ch/html/menu3/b/treaty15_asp.htm.

83 See <http://www.interpol.int>. Interpol does not make its full database of missing/abducted children available at this time.

84 REPORT OF THE INTERNATIONAL COURT OF JUSTICE, 1 Aug. 2002 – 31 July 2003, *available at* http://www.icj-cij.org/icjwww/igeneralinformation/igeninf_Annual_Reports/iicj_annual_report_2002-2003.pdf. The sixty-four countries party to the ICJ are: Australia, Austria, Barbados, Belgium, Botswana, Bulgaria, Cambodia, Cameroon, Canada, Costa Rica, Cyprus, the Democratic Republic of the Congo, Denmark, Dominican Republic, Egypt, Estonia, Finland, Gambia, Georgia, Greece, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Ivory Coast, Japan, Kenya, Lesotho, Liberia, Liechtenstein, Luxembourg, Madagascar, Malawi, Malta, Mauritius, Mexico, Nauru, Netherlands, New Zealand, Nicaragua, Nigeria, Norway, Pakistan, Panama, Paraguay, Peru, the Philippines, Poland, Portugal, Senegal, Serbia and Montenegro, Somalia, Spain, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Uganda, United Kingdom of Great Britain and Northern Ireland and Uruguay. The declaration of Peru was deposited with the Secretary-General of the United Nations during the twelve months under review, on 7 July 2003.

country party to the ICJ at present. With regard to the ICC, “[a]s of 5 September 2003, 92 countries have ratified the Rome Statute of the International Criminal Court.”⁸⁵

Jordan is the only North African or Middle Eastern country party to the ICC at present. Part II (B) of this paper examined some difficulties concerning Muslim-majority countries’ abilities to uphold international human rights standards without conflicting with Islamic law. There remains, then, the question of how to formulate international human rights mechanisms—for the purposes of this paper, an international family court—so as to appeal to Muslim countries through a respect for Islamic law.

A. The Islamic Human Rights Tradition

¶ 35 Islam prides itself on its commitment to human rights, preparing documents such as the Universal Declaration of Human Rights attributing these rights to divine origination:

Islam gave to mankind an ideal code of human rights fourteen centuries ago. These rights aim at conferring honour and dignity on mankind and eliminating exploitation, oppression and injustice. Human rights in Islam are firmly rooted in the belief that God, and God alone, is the Law Giver and the Source of all human rights. Due to their Divine origin, no ruler, government, assembly or authority can curtail or violate in any way the human rights conferred by God, nor can they be surrendered. Human rights in Islam are an integral part of the overall Islamic order and it is obligatory on all Muslim governments and organs of society to implement them in letter and in spirit within the framework of that order.⁸⁸

In contrast to the secular international human rights documents of many non-Muslim-majority countries and international organizations, the contents of the UIDHR and CDHR find their authority in the Qur’an and the Hadith. While Islamic human rights theories are therefore rooted in a legal system that is based on precepts of religion, reformists such

85 “International Criminal Court: States Parties” at <http://www.icc-cpi.int/php/statesparties/allregions.php>. The ninety-two countries party to the ICC are: Afghanistan, Albania, Andorra, Antigua and Barbuda, Argentina, Australia, Austria, Barbados, Belgium, Belize, Benin, Bolivia, Bosnia and Herzegovina, Botswana, Brazil, Bulgaria, Cambodia, Canada, Central African Republic, Colombia, Costa Rica, Croatia, Cyprus, Democratic Republic of Congo, Denmark, Djibouti, Dominica, East Timor, Ecuador, Estonia, Fiji, Finland, France, Gabon, Gambia, Georgia, Germany, Ghana, Greece, Guinea, Honduras, Hungary, Iceland, Ireland, Italy, Jordan, Latvia, Lesotho, Liechtenstein, Lithuania, Luxembourg, Macedonia, Malawi, Mali, Malta, Marshall Islands, Mauritius, Mongolia, Namibia, Nauru, Netherlands, New Zealand, Niger, Nigeria, Norway, Panama, Paraguay, Peru, Poland, Portugal, Republic of Korea, Romania, Saint Vincent and The Grenadines, Samoa, San Marino, Senegal, Serbia and Montenegro, Sierra Leone, Slovakia, Slovenia, South Africa, Spain, Sweden, Switzerland, Tajikistan, Tanzania, Trinidad and Tobago, Uganda, United Kingdom, Uruguay, Venezuela, and Zambia.

86 Universal Islamic Declaration of Human Rights, 21 Dhul Qaidah 1401, 19 September 1981, *available at* <http://www.shrc.org/english/docs/uidhr.htm>.

87 Cairo Declaration on Human Rights in Islam, 14 Muharram 1411, 5 August 1990, *available at* http://www.humanrights.harvard.edu/documents/regionaldocs/cairo_dec.htm.

88 Universal Islamic Declaration of Human Rights, *supra* note 86, at Foreword.

as Shaheen Sardar Ali, Fatima Mernissi, and Mohammed Arkoun argue that *Shari'a* “does not consist of immutable, unchanging set[s] of norms, but have a built in dynamism that is sensitive and susceptible to changing needs of time.”⁸⁹ Ali suggests that because of this fluidity of Islamic law, “human rights in Islam are not entirely irreconcilable with current formulations of international human rights instruments emanating from the United Nations.”⁹⁰

¶ 36 Given this background in Islamic human rights philosophy, why is Islam widely understood to be religion as propounded by the Prophet Muhammad:

[o]ver the centuries...and with the decline of the Muslim intellectual tradition, a fossilization of Islamic law set in, affecting adversely a wide range of people and institutions, including women. . . . This trend started soon after the death of the Prophet Mohammed . . . Male scholars took over the task of interpreting and commenting on the Qur'an . . . leading to a tradition where the religious text became imbibed with male-oriented interpretations preaching male superiority.⁹¹

Despite the present-day reality of a fairly rigid Islamic legal system throughout much of North Africa and Middle East, contemporary Muslim reformists and legal scholars argue for and propose alternative ways of categorizing Islamic law that are both in keeping with Islamic “tradition” as well as the current realities of a global climate. Ustadh Mahmood Mohammed Taha, the late Sudanese reformer, argued for one such approach. Taha “call[ed] for the shifting of legal efficacy from one set of Qur’anic verses to another in keeping with the needs of societies today. He believe[d] that the inferior status of women [is not an] original [precept] of Islam,”⁹² but that certain statements in the Qur’an that called for veiling of women and segregation of the sexes were intermediary steps to prepare the early Muslim community for full equality, which would be established when the community was ready. Taha’s argument is based on the earlier Qur’anic verses from the Prophet Muhammad’s time in Mecca, which provide for a universal equality.⁹³

¶ 37 Taha’s approach is not merely a pipe dream; Islamic law has indeed changed in the modern era, Muslim states. These aspects of *Shari'a* repudiate the basis of modern international law.”⁹⁴ While inter-state relations differ greatly from state v. private citizen relations, this still demonstrates that contemporary Islamic jurisprudence allows for repudiation, albeit

89 Shaheen Sardar Ali, *Gender and Human Rights in Islam and International Law* 3-4 (2000).

90 *Id.* at 3.

91 ALI, *supra* note 89, at 4, n.14. Ali also notes that after the tenth century, independent legal reasoning and judgment were forbidden, resulting in a more rigid system of legal interpretation.

92 *Id.* at 85.

93 Ustadh Mahmood Mohammed Taha, *The Second Message of Islam*, Abdullahi Ahmed An-Naim 139, 23 (1987).

94 Venkatraman, *supra* note 28, at 1972 (*citing* ABDULLAHI AHMED AN-NA'IM, *TOWARD AN ISLAMIC REFORMATION* 9 (1990)). An-Na'im also notes that although slavery can be interpreted to be condoned by *Shari'a*, many Muslim-majority countries utilizing *Shari'a* in their legal systems reject this interpretation and condemn slavery.

selective, of *Shari'a*-ordained laws when they are opposed to international human rights norms.⁹⁵

B. Gaining the Participation and Support of Muslim-majority States for an International Family Court

1. *Working Together from Square One*

¶ 38 Recognizing and respecting the framework of Islamic human rights law, there are several ways to craft a court, working together to craft a declaration of purpose, statute of the court, rules of the court, and other organizational documents.⁹⁶ If Muslim-majority states are involved in the shaping of the court from the start, there would be a better chance that the court would develop into a mechanism that would be appealing to Muslim-majority countries. Further, once the court is established, all states parties to the court would be represented through a body similar to the Assembly of States Parties at the International Criminal Court,⁹⁷ guaranteeing an advisory role to all states parties.

¶ 39 Problems with this approach include the issue of who exactly would represent Muslim-majority countries. Such individuals as An-Naim, Ali, and Mernissi are not state representatives possessing diplomatic authority to speak on behalf of the world's nations. It might therefore be difficult to find representatives from Muslim-majority countries that would support ideas and approaches to family law other than those which presently exist in their countries and perpetuate the problem of international parental child abduction. If an advisory body of scholars and non-diplomatic representatives were to be created, such Muslim-majority countries may refuse to participate in the court entirely. Yet reformist ideas from within the Muslim community are clearly integral to reshaping the current climate of family law in Muslim-majority countries and its impact on international parental child abduction. How then, to include reformist advisors while still ensuring the participation of present Muslim-majority governments?

2. *Other Options: Sanctions and Aid*

¶ 40 In order to gain the participation of Muslim-majority countries who might be reluctant to join an international family court, those discussed in Part III (B)(2) of this paper, where the left-behind country would refuse to grant visas to family members of the abductor unless the child is returned. For example, citizens in less-developed countries (many of which are in the North African and Middle Eastern region) often seek medical treatment in Western, modernized countries in North America and Europe. If those medical resources were unavailable on a large scale due to an IFC-related sanction by relevant IFC-member countries, it could

⁹⁵ *Id.* at 1973.

⁹⁶ Muslim-majority countries are not the only nations that might be reluctant to join an international family court; the United States itself is not a strong supporter of international courts, and thus might not be interested in joining such a court. International parental child abduction of American children out of the U.S., however, is a significant problem, and political pressure within the U.S. might be effective in convincing the U.S. to join an international family court.

⁹⁷ For an explanation of the structure of the ICC's Assembly of States Parties, see <http://www.icc-cpi.int/php/show.php?id=asp>.

result in “forcing” Muslim-majority countries to acquiesce and join the IFC. However, such an approach is obviously contentious, and subject to criticism on humanitarian grounds itself, which renders it a non-viable option.

¶ 41 Economic sanctions could similarly be used to encourage Muslim-majority countries to join the IFC. However, many Middle Eastern countries are wealthy and not dependent on foreign aid and would not be affected by this approach. An opposite approach would be to *offer* international aid or assistance to Muslim-majority countries contingent upon their joining the IFC as well as other international courts and conventions. Such aid could even be linked to children’s issues (which are less controversial in the Muslim world than women’s rights issues) in a continued attempt to place children’s human rights on the political and social agenda of Muslim-majority countries.

VI. Conclusion

¶ 42 Ideally, an international family court would be an unbiased clearinghouse where multiple views of Muslim-majority countries. The court could also be used for international divorce proceedings, custody hearings and disputes, all of which relate to international child abduction. The problem of gaining the participation of Muslim-majority countries, however, remains a significant obstacle as there is currently little incentive for such countries to join the court.

¶ 43 Despite this reality, constructive involvement of Muslim-majority countries in an international family court would offer such countries a chance to provide accurate reflections of the Islamic tradition. Intra-Islamic dialogue is an essential step in reconciling Islamic law with the realities of a twenty-first century international dialogue. And dialogue between the Muslim world and the Western world has never been as urgent as it is at the present time.

¶ 44 Initial Muslim-majority country involvement in creating the IFC would offer such countries a chance to provide accurate reflections of the Islamic tradition. Islam, human rights, children’s rights, and women’s rights are not mutually exclusive entities, and an international family court could be a groundbreaking institution for balanced and future reform in the Islamic human rights scheme.

¶ 45 Obstacles to an international family court are significant and substantial. But present remedies are available for change and reform from within the Muslim world. This is not an unrealistic or impossible scenario, though it is one that would require time and patience. Many Muslim-majority countries, such as Iran, Egypt, and Morocco have vocal reformist groups who are interested in a human rights schema that includes equal treatment of women and respect for religious and ethnic minorities.

¶ 46 As suggested earlier in this paper, something much more substantial (and difficult, if not impossible) is needed at the heart of searching for a solution to the problem. Resolution of such a question requires a willingness to negotiate, a willingness to respect other traditions and views on religion, and above all, a basic respect for human dignity. Is the world ready for such a step?