

DEAR JAPAN: INTERNATIONAL PARENTAL CHILD ABDUCTION IS A PROBLEM

Japan is a safe haven in the world of international parental child abductions,¹ which became known to the world in October 2009 when American-born Christopher Savoie was arrested in Japan as he attempted to bring his children back to the United States.² Chris had expressed fear that his ex-wife, and Japanese-native, Noriko Savoie may permanently take their children to Japan during U.S. custody proceedings, and sure enough, she abducted the children to Japan in August 2009 in violation of the U.S. court order.³ So, where is the Savoie family now? Chris was released from jail on the condition he does not return to Japan or contact his children,⁴ while Noriko lives with their children in Japan, subject to U.S. charges for child abduction.⁵ Japan still considers Noriko and Chris married.⁶

1. Masami Ito, *Outside the 1980 Hague Convention: Japan Remains Safe Haven for Parental Abductions*, JAPAN TIMES, Dec. 31, 2005, <http://www.irocs.org/resources/print-the-japan-times---december-31-2005.pdf>.

2. Kyung Lah, *American Father in Custody Case Released from Japanese Jail*, CNN.COM, Oct. 15, 2009, <http://edition.cnn.com/2009/WORLD/asiapcf/11/11/japan.custody.battle/index.html?iref=allsearch>; see also *Hearing on H.R. 1326 Before the H. Comm. on the Judiciary*, 111th Cong. (2010), <http://www.iapcr.org/hr1326/> (statements of Rep. Howard Berman, Chairman, Foreign Affairs Comm., Rep. Christopher Smith, and Rep. James Moran). Against all common sense, Japan will arrest a U.S. father for kidnapping his child from Japan in violation of a Japanese court order, but refuses to penalize a Japanese mother who kidnaps her child from the U.S. in violation of a U.S. court order. *Hearing on H.R. 1326 Before the H. Comm. on the Judiciary, supra*.

3. Lah, *supra* note 2; see also Petition for Modification & for Enforcement of Parenting Plan & for Contempt, *Savoie v. Savoie*, No. 34775 (Chancery Ct. for Williamson Co., Tenn. Mar. 13, 2009), available at <http://www.newschannel5.com/Global/Category.asp?C=175746>.

4. Lah, *supra* note 2.

5. See, e.g., *United States v. Amer*, 110 F.3d 873 (2d Cir. 1997) (discussing a father's arrest for abducting his children to Egypt after voluntarily returning to the U.S.).

While the couple is divorced and Chris has full custody of their children in the U.S.,⁷ he has no way to enforce his visitation rights in Japan.⁸ Sadly, 139 abducted U.S. children are currently living in Japan.⁹

Well aware of Mr. Savoie's situation, the U.S. hoped Japan's November 2009 election would end decades of conservative power and provide an opportunity to discuss the issue of parental child abduction.¹⁰ In a letter dated November 5, 2009, U.S. Senators expressed concern to President Obama that Japan does not criminalize parental abduction, and is the only "Group of Seven" industrialized nations which has not signed the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("Hague Convention").¹¹ The Senators stressed that while Japan's accession to the Hague Convention may require an overhaul of Japan's Civil Code,¹² the U.S. cannot sit back while abducted children grow up without one parent.¹³

without the children).

6. Lah, *supra* note 2.

7. *Id.*

8. See *Hearing on H.R. 1326 Before the H. Comm. on the Judiciary*, *supra* note 2.

9. *Id.*

10. *U.S. Senators Press Japan on Parental Abductions*, AFP, Nov. 9, 2009, <http://www.thefreelibrary.com/US+senators+press+Japan+on+parental+abductions-a01612053436>; *U.S. Senators Urge Obama to Press Japan on Child Abductions*, KYODO NEWS INTERNATIONAL, INC., Nov. 9, 2009, 2009 WL 23215348. In November 2009, Japan's Prime Minister Yukio Hatoyama pledged to build a less subservient relationship with the U.S., and in February 2010, he declared his intent to sign the Hague Convention. *Japan to Sign Treaty on Parental Rights*, AFP, Aug. 14, 2010, <http://news.smh.com.au/breaking-news-world/japan-to-sign-treaty-on-parental-rights-20100814-1245h.html>. However, Hatoyama resigned in May 2010 due to political funding scandals and the mishandling of a long-running dispute over a U.S. airbase. *Id.*

11. *U.S. Senators Press Japan on Parental Abductions*, *supra* note 10; *Hearing on H.R. 1326 Before the H. Comm. on the Judiciary*, *supra* note 2. The Hague Convention serves to facilitate the return of abducted children to their habitual residence, and has eighty-one member countries. UNIF. CHILD ABDUCTION PREVENTION ACT, *Prefatory Note*, 1 (2006), http://207.58.181.246/pdf_files/library/Uniform_Child_Abd_prev_act.pdf.

12. *Sens. Boxer, Corker Lead Bipartisan Effort to Address Parental Child Abduction to Japan*, U.S. FEDERAL NEWS, Nov. 6, 2009, 2009 WLNR 22300992. Joint custody and visitation rights are unavailable in consensual divorces in Japan. Colin P.A. Jones, *Article: In the Best Interests of the Court: What American Lawyers Need to Know about child Custody and Visitation in Japan*, 8 ASIAN-PAC. L. & POL'Y J. 166, 212 (2007). Only if the divorce is contested and court intervention is required so such rights become possible under the court's authority to "order such other dispositions as may be

On December 1, 2009, in response to criticism expressed by America and Europe, Japanese Foreign Minister Katsuya Okada unveiled a new Division for Issues Related to Child Custody to recommend whether Japan should sign the Hague Convention.¹⁴ Although critics questioned Japan's willingness to stray from its customs, it appeared Japan was at least attempting to address the international crisis.¹⁵

Months later, however, Congress was still not satisfied. On May 5, 2010, U.S. lawmakers introduced H.R. 1326, a non-binding resolution condemning Japan for being an international safe haven for child abductors, and calling on the American government to pressure Japan to join the Hague Convention.¹⁶

appropriate." *Id.* If granted, visitation rights are limited due to the strong disapproval of parents who divorce for their own convenience and then argue for visitation rights. *Id.* at 236. Also, many Japanese citizens believe visitation from a parent who is not part of the child's everyday life destroys the continuity of the custodial parent-child bond. *Id.*

13. U.S. Senators Urge Obama to Press Japan on Child Abductions, *supra* note 10.

14. Minoru Matsutani, *Child Custody Division Set Up: Treaty Studied on Protecting Kids When International Marriages Fail*, JAPAN TIMES, Dec. 3, 2009, <http://www.japantimes.com>. The pressure ascended in February 2010 when ambassadors of eight countries called upon Japan to work on the issues. Jeremy Morley, *Japan & International Child Abduction: An Update*, Feb. 24, 2010, <http://www.internationalfamilylawfirm.com/2010/02/japan-international-child-abduction.html>.

15. Matsutani, *supra* note 14 (stating that while Japan's government seemed to be drawing closer to signing the Hague Convention, statements made by Foreign and Justice ministries indicating Japan is "very seriously and carefully considering signing" the treaty date back to May 2009).

16. Eric Johnston, *U.S. Resolution Condemns Japan: Lawmakers Press for Action on Child Abductions*, JAPAN TIMES, May 7, 2010, <http://search.japantimes.co.jp/cgi-bin/nn20100507a3.html>. H.Res. 1326 begins with the following text:

Calling on the Government of Japan to immediately address the growing problem of abduction to and retention of United States citizen minor children in Japan, to work closely with the Government of the United States to return these children to their custodial parent or to the original jurisdiction for a custody determination in the United States, to provide left-behind parents immediate access to their children, and to adopt without delay the 1980 Hague Convention on the Civil Aspects of International Child Abduction.

H.R. 1326, 111th Congress (2010). Also introduced during the summer of 2010, both of which remain pending in the House, are the International Child Abduction Prevention Act of 2009 to establish an Office on International Child Abductions, and the International Parental Child Abduction Deterrence Act to require the government to take certain actions against foreign nationals involved in international child abductions. H.R. 3240, 111th Congress (2010); H.R. 3487, 111th Congress (2010).

After months of uncertainty,¹⁷ H.R. 1326 was passed by a House vote of 416 to 1 on September 28, 2010.¹⁸

Following the passage of H.R. 1326, the Japanese Embassy issued a statement alleging Japan is sympathetic to the plight of children caught in Japanese-American custody battles, and is “continuing to make sincere efforts to deal with the issue from the standpoint that the welfare of the child should be of the utmost importance.”¹⁹ Japan’s deputy press secretary indicated Japan was seriously considering signing the Hague Convention, but needs time to prepare domestic laws on the issue.²⁰

But, how long will Japan need to “prepare domestic laws” before signing the treaty? Will Japan be willing to transform its family system, despite the long-standing customs and values of Japanese citizens, to avoid international conflict? Moreover, even if Japan reforms its domestic laws and signs the Hague Convention, many critics fear Japanese courts will avoid returning children to their habitual residence by simply declaring “there is a grave risk that his or her return would expose the child[ren] to physical or psychological harm or otherwise place the child[ren] in an intolerable situation.”²¹ For example, Attorney Kensuke Onuki is opposed to Japan signing the treaty because he claims most of his international parental

17. Press Release, U.S. Congress Close to a Vote on H.R. 1326, condemning Japan for Child Abduction (Sept. 24, 2010), available at <http://www.prurgent.com/2010-09-24/pressrelease121137.htm> (“If H.R. 1326 does not come to vote before October 1, 2010, it will be forced to move to the next 2011 Congress....”).

18. Foster Klug, *US Lawmakers Push Japan on Custody Rights*, AFP, Sept. 30, 2010, <http://www.metronews.ca/edmonton/world/article/648701--us-lawmakers-push-japan-on-custody-rights>. Prior to the vote, multiple House Representatives stressed that the U.S. and Japan have a strong critical alliance, but Japan has yet to return a single abducted child in accordance with legally enforceable U.S. court orders. *Hearing on H.R. 1326 Before the H. Comm. on the Judiciary*, *supra* note 2.

19. Foster Klug, *supra* note 18.

20. *Japan Says it May Sign Treaty Against Child Abductions*, AFP, Sept. 30, 2010, <http://www.mysinchew.com/node/45740>.

21. See Zeit Gist, *Every Husband a Potential “Abuser”: Claims of “violence” offer catch-all way to cut fathers from kids’ lives*, JAPAN TIMES, Nov. 24, 2009, <http://www.japantimes.com>. According to Gist, Japanese courts tend to apply two rules in domestic violence matters: (1) domestic violence is an act of men against women and children; and (2) almost any conduct amounts to domestic violence, including physical, verbal, and psychological violence (i.e., being extremely quiet or non-responsive). *Id.*

child abduction cases involve “domestic violence, unjust control and verbal abuse.”²² Under these conditions, the Hague Convention would not force Japan to return the children.²³

Regardless of when, or whether, Japan signs the Hague Convention, a bilateral treaty between the U.S. and Japan is imperative. A bilateral treaty would resolve pending cases of child abduction which would not receive relief under the Hague Convention,²⁴ and also serve as a gap-filler to the Convention.²⁵ Moreover, a treaty particularized to Japan’s unique family law system could enable Japan to enforce the terms of the Hague Convention without offending the country’s customs and values, and without requiring a complete overhaul of its legal system. For these reasons, a bilateral treaty will be necessary between the U.S. and Japan regardless of whether Japan ultimately signs the Hague Convention.²⁶

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22. Masamito, *Custody or Abduction? Experts Divided on Signing ‘Parental Kidnapping’ Treaty*, JAPAN TIMES, May 14, 2010, <http://www.japantimes.com>. According to Kensuke, who argues the Hague Convention is based on the parents’ rights and not the welfare of the child, the key reason a Japanese mother removes her child to Japan is because the child becomes mentally unstable. *Id.* Conversely, attorney Mikiko Otani believes Japan should sign the treaty despite her mixed feelings so that Japanese mothers are not forced to live in constant fear of having their children taken away. *Id.*

23. Hague Convention of the Civil Aspects of International Child Abduction, opened for signature Oct. 25, 1980, S. Treaty Doc. No. 99-11, arts. 6-9, reprinted in *19 I.L.M. 1501, 1501-02 (1980)*.

24. *U.S. Senators Urge Obama to Press Japan on Child Abductions*, *supra* note 10.

25. See Simon Law Firm, *Former UGA Prof’s International Divorce Dispute at GA Supreme Ct*, Sept. 20, 2010, <http://www.fultoncountydivorcelawblog.com/2010/09/former-uga-profs-international-divorce-dispute-at-ga-supreme-ct.shtml>. In this case, a child was born in Italy in 2002, moved to Georgia with his parents in 2004, and taken by his mother back to Italy in 2007. *Id.* Since child custody matters are handled by the country of the child’s habitual residence under the Hague Convention, the Georgia Supreme Court must decide if his habitual residence is Italy or Georgia (though Italy already determined it has jurisdiction). *Id.* A bilateral treaty could effectively address this issue.

26. Actually, a bilateral treaty could be executed between the U.S. and Japan even if Japan ultimately refuses to sign the Hague Convention, similar to the agreement between Australia, a Hague Convention member, and Egypt, a non-Hague Convention member. Convention of 25 October 1980 on the Civil Aspects of International Child Abduction – status on: 1 March 2010, http://www.hcch.net/upload/abductoverview_e.pdf.