DEAR JAPAN:

INTERNATIONAL PARENTAL CHILD ABDUCTION IS A PROBLEM

Japan is a safe haven in the world of international parental child abductions.1 This became obvious 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 might permanently take their children to Japan during U.S. custody proceedings, and as predicted, she abducted the children in August 2009 in violation of the U.S. court order.3 Chris was released from jail on the condition he does not return to Japan or contact his children,4 and Noriko, still facing U.S. charges for child abduction, lives with the couple’s children in Japan.5 Japan still considers Noriko and Chris married.6

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. without the children).
Though U.S. courts recognize the couple as divorced and have granted Chris full custody of the children, he has no way to enforce his visitation rights in Japan. Unfortunately, Japan is now home to 139 children abducted from a U.S. parent.

Well-aware of Mr. Savoie’s situation, U.S. policymakers hoped Japan’s 2009 elections would end decades of conservative power and provide an opportunity to discuss parental child abduction. In a November 5, 2009 letter to President Barack Obama, U.S. Senators noted their concern 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”). The letter stressed that, though Japan’s accession to the Hague Convention is a worthy goal, the United States cannot simply wait for Japanese

7. Id.
9. Id.
accession while abducted children grow up without one parent.13

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 U.S. government to pressure Japan to join the Hague Convention.16

possible under the court’s authority to “order such other dispositions as may be 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.


15. Matsutani, supra note 14 (noting that statements made by Foreign and Justice ministries indicating Japan is “very seriously and carefully considering signing” the treaty date back to May 2009).


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.
After months of uncertainty, H.R. 1326 was passed by a House vote of 416 to 1 on September 28, 2010.

Following the passage of H.R. 1326, the Japanese Embassy issued a statement alleging Japan is sympathetic to the plight of children caught in U.S.–Japan 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.” Japan’s deputy press secretary indicated Japan was seriously considering signing the Hague Convention, but needs time to prepare domestic laws on the issue.

It is unclear how much time Japan will need to prepare these domestic laws and whether the country is truly willing to transform the established customs and values of its family law system to avoid international conflict. Moreover, many critics fear that, even if Japan reforms its domestic laws and signs the Hague Convention, Japanese parents could avoid the Convention’s requirements by simply claiming that returning the children would expose the children to a risk of physical or psychological harm. For example, attorney Kensuke Onuki opposes Japanese accession to the Hague Convention because most of the cases he’s seen involve “domestic violence, unjust


19. Foster Klug, supra note 18.


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.
control[, and] verbal abuse.” Where those circumstances exist, the Hague Convention does not force the return of children.

Regardless of when—or whether—Japan signs the Hague Convention, U.S. policymakers should pursue a bilateral treaty with Japan. Such a treaty would resolve pending child abduction cases ineligible for consideration under the Hague Convention and would serve as a gap-filler to the Convention. 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. Thus, a U.S.-Japan treaty is crucial, regardless of whether Japan ultimately signs the Hague Convention.

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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.


25. See Simon Law Firm, Former UGA Prof’s International Divorce Dispute at GA Supreme Ct, Sept. 20, 2010, http://www.fultoncountydivorceblog.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 was 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 has already determined it has jurisdiction). Id. A bilateral treaty could effectively address this issue.


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