

# The Issue of International Child Abduction\*

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## Introduction

This paper will deal with an overview of three specific points in relation to The Hague Convention on the Civil Aspects of International Child Abduction. The first point is that international child abduction is not considered an important problem in Japan. The second point is that although international child abduction is not considered an important issue, in reality it should be an important issue to the Japanese. And, the third point is that what is important is that there are very few reasons which cause problems similar to that of the Western Countries. I would like to concentrate on these three points in discussing the topic of this problem

At first glance it may seem as though I am saying something contradictory, however, the first point refers to the notion that a country's historical, cultural, religious, or customary aspects cannot be ignored when thinking about international problems. Here, I want to stress that it is vitally important to recognize the differences.

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The second point refers to the notion that a preconception of something causes the major issue to become unclear. Scientific data and an objective perspective are necessary to understand the issue.

The third point refers to the notion that a very satisfying position or condition can be the cause to the situation becoming a problem. In other words, we should not forget that everything has a good side and a bad side, advantages and disadvantages and so on. I would like all of you to keep these points in mind while you listen to what I have to say.

I would like to mention briefly the Japanese example while taking into account and understanding the topic of The Hague Convention on the Civil Aspects of International Child Abduction. And I would like to concentrate on the basic problems, especially the causes to these problems. There is an old Japanese proverb that says, “To suppress a bad smell or odor, it is not enough to merely clear the smell. One must eliminate the root of the problem.” In this manner, I will focus on the “root of the problem.”

The detailed discussion of the Hague Convention itself will not be dealt with in this paper.

### **Historical, Cultural, Religious, and Customary Aspects**

The number of children that are victims of international abduction and the reasons behind it have already been mentioned—the increase of international marriages and divorces. I wonder whether “international divorce” is the proper term, however, whatever the proper term is the situation is definitely increasing. At this stage we are already discussing my first point of interest. To be sure, there exists more

problems to be considered if two people from different countries marry as opposed to two that are from the same country. Of course, this does not mean that because there are more problems the marriage will not be a good one since we already know that there are many international marriages and many of them are very happy ones. However, in either case, there exists a necessity for each party to understand each other's country's historical, cultural, religious, and customary aspects. Since there are many differences that may not have been expected, such as things that one may think as common sense may not be common sense to the other party, each party will need to realize this aspect.

For example, in Japan, there was a divorce case between a Japanese male and a foreign female where a problem with child custody occurred. The Family Court had problems mediating child custody for the Japanese male because the foreign female argued against his custody for religious reasons. She argued that "my husband eats meat. I cannot have my child be raised by such an uncivilized barbarous person." It is obvious from her argument that her religious reasoning was based on the fact that she did not eat meat. To her, it may have been common sense, but to her husband (and also myself) eating meat has very little to do with raising a child. In my case, I eat meat, and am in the process of raising a boy and a girl. They seem to be doing fine! ? There are many other examples, but let me just mention another one. There was a Japanese male who was married with an Egyptian female. At the divorce proceedings the Egyptian female argued that her husband was neglecting their family because he was working too much. I will end on the first point saying that it is necessary to understand that the situation differs as the country dif-

fers.

Here, I want to discuss topics of the internationalization of the family and of divorce, problems concerning child custody and guardianship, the increasing problems of abduction of the child by family members and the retrieving of the child from the perspective of abduction. According to several articles the advanced countries are experiencing a very serious situation, however, Japan is experiencing a very different situation.

In Japan, international marriages are also increasing as in other countries. I have discussed this aspects in my paper ("The Present Situation and Issues Concerning Inter-Country Adoption", *Conference Papers, Breaking up is hard to do*, Law Book Company Limited 1994). I have statistics showing an increase of five times from 1970 to 1990. It is an extraordinary increase. What is more surprising is that this equals a total of 3.6 percent of the total marriages and amounts to only 25,000 couples. It is not my intention to emphasize the insignificant numbers, however, in my personal opinion, even if we were to suppose that there was a further increase of international marriages, it would be difficult to assume Japan experiencing a situation like that of the Western nations with children being abducted or having this situation occur after divorce disputes.

Before explaining the reasons behind my supposition, let me first explain the basis behind my comments. My comments are based on the fact that there are very few divorce cases that escalate into the problem of abduction of the child. Therefore, my supposition may not be too far off the mark. There are many reasons for my supposition, however, because of limitations I will discuss only the major reason. The reason is due to stability of the society and ironically stability of

the family. Although it may be difficult to understand that the Japanese society is stable, in national surveys a majority of people believe that they are a part of the middle class. Also, the family is quite stable with only occasional insignificant problems. If we take the example of divorce, as the statistics show, the divorce rate is quite low. Another fact that cannot be ignored is that although it may be very stable for those within this situation, others that are not in this situation will definitely experience many problems. Thus, since living with a child with mixed blood after a divorce would be very uncomfortable, there are very few cases in which a Japanese parent returns to Japan after taking custody or guardianship of his or her child after a divorce of an international marriage. In many cases, the parent in this situation chooses to stay and live in the foreign country he or she is residing in. Therefore, the problem of abduction that exists in many advanced countries does not exist in Japan. To be sure, the low divorce rate helps a great deal.

In this manner, it is important to realize that a certain matter may develop into a different problem depending on whether it be experienced in the East or West.

### **Necessity of an Objective Perspective**

Here, let me go on to my second point. Although international child abduction does not exist in the same manner as that of other Western countries, it is still an important problem to consider in Japan. Statistics show that approximately 650 children have been sent abroad, mainly to the United States, within the last ten years. Most of them are said to be infants less than a year old. Japan is surprisingly an exporter of infants. As mentioned earlier, the second point notes that a

preconception of something might cause the major issue to become unclear. Many of you may have thought that the 650 children that were sent abroad were for adoption, however, in some cases there have been suspicion of illegal selling of children, in other cases children have been taken away from their parents without proper consent, something similar to that of abduction. Many of you may have had a preconception of Japan that had nothing to do with the problems just mentioned. The “economic giant” and the “strong yen” may not necessarily be all that good for Japanese companies in all respects, however, for me personally it is very convenient. My opinion is that such issues as the “strong yen” distract many people away from the important issues that I have mentioned.

As I have written in my paper, the case mentioned in footnote 71 (Judgement of the Osaka Appellate Court, 16 June 1980) is a typical example. In many cases a child is taken away without parental consent, and the parent of the child requests the child's return by filing protection for a child with the court. There have been reports suggesting that the parent in some cases did not know where the child had been taken and in others whether or not an adoption had really taken place.

If abduction can be defined as “taking a person away from ordinary life against the will of that person or his or her guardian,” then it can be said that in Japan there are many cases similar to the above definition in the name of inter-country adoptions. Problems of this kind tend to exist in developing countries and are connected with economic factors. Japan is neither a developing country nor are these problems connected with economic factors. I will explain the reason by way of the third point, but first, I would like to emphasize the point of

eliminating the preconceptions you have of each country. To study the issue of the Hague Convention we need to reconfirm the true situation at hand and discard the stereotypical ways of thinking such as "These are problems related to only developing countries."

### **Advantage is also Disadvantage**

The reason this kind of problem exists in Japan, ironically, is due to the stability of the Japanese family. This stability causes families in Japan to do away with any problems or trouble that may result in instability. In my paper describing the situation of adoptions, I mention some of the conditions that make Japanese families decide to send foster children overseas. To summarize this condition, the Japanese family desires to live in the same manner as the family next door. This assures stability within society and a happy life, however, although the numbers are very small, families that are not a part of this condition experience a very difficult situation. In other words, children's rights are jeopardized when a family is situated outside the limits of the stable family.

For example, it would be very difficult to raise a child in the Japanese society if it were born between an unmarried man and woman, especially if they were minors. Society tends to be more severe with them, and makes it nearly impossible to raise the child. Also, it becomes quite difficult for the child to grow up normally in society and even in the family. This situation makes it difficult for the child to be adopted in a Japanese family. As a result, there is a supply of foster children for inter-country adoption.

Ironically, the supply of foster children is due to the stability of the family, and which also leads to a threatening of children's rights. On

the other hand, in the case of the United States, the restriction and prejudices are less prevalent against pregnancy and childbirth of minors and because of the diversity of the way of thinking toward the family, there is a demand for inter-country adoptions.

This is a very difficult problem to solve because many factors conflict with each other when considering the stability of the family versus the children's rights, parental rights versus children's rights, rights to form a family versus children's rights, and so on. How to adjust and regulate these conflicting issues is the next step to resolving the problem for the future.

Because of the time limitation, I was not able to give an adequate presentation. My final proposition to you is that although I do agree that it is important to try to resolve problems that have occurred, including problems of international child abduction, I also think that the consideration of the factors concerning the problems from different angles and trying to consider ways of preventing the matter from occurring is also necessary.