

The Hague Child Abduction Convention and Cooperation between Contracting States — A Study on the Hague Child Protection Convention, Child Support Convention and Maintenance Protocol (summary)

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Pursuant to the 1980 Hague Child Abduction Convention, a child, who habitually resides in Contracting State A and has been wrongfully removed to or retained in Contracting State B by the taking parent (“TP”) in breach of rights of custody of the left behind parent (“LBP”), is promptly returned to State A. The Convention ensures that State B as the state of refuge does not decide on the merits of custody, leaving it to the competence of State A as the state of origin. By duly distributing jurisdiction between contracting states, the Convention deters forum shopping and conflicting custody decisions. Moreover, the Convention ensures that the parent living in a different country from the child be provided with frequent access to the child. The mechanism of the Convention, grounded on administrative and judicial cooperation, serves to realize best interests of the child and respect the right of the child to maintain personal relations and regular contact with both parents under the 1989 UN Convention on the Rights of the Child.

The Hague Child Abduction Convention has so far attracted 101 contracting states. Japan accepted the Convention on 24 January 2014, and it entered into force on 1st April 2014 along with its Implementation Act. While judicial practice has gradually been installed since then and the Implementation Act was amended in 2019 to strengthen the enforcement of return orders, there are remaining challenges of how best to implement return procedures, ensure a safe return of the child, carry out execution by substitution, employ habeas corpus orders, and coordinate jurisdiction on the merits of custody, access, and provisional measures. A viable and effective way for Japan to tackle these tasks could be the ratification of the 1996 Hague Child Protection Convention, as well as the 2007 Hague Child Support Convention and Maintenance Protocol. Although states in the Asia-Pacific have scarcely joined them, these instruments provide an appropriate legal framework for protecting the child and complementing the operation of the Child Abduction Convention through administrative and judicial cooperation.

Against this background, the underlying paper aims to study the meaning, structure, and mechanism of the 1996 Child Protection Convention, as well as the 2007 Child Support Convention and Maintenance Protocol, and analyze the way they interact with and complement the Child Abduction Convention. After comparing these instruments with the existing private international law rules in Japan, this paper considers drawbacks and gaps in domestic law and envisages the possibility of Japan joining these instruments, which will necessarily entail some statutory amendments. Through these examinations, this study highlights the significance and advantage for Japan to take part in the official and unofficial network created by the Hague instruments to enhance child protection in the international arena.

Notably, the European Parliament adopted a resolution on 8 July 2020, urging Japan to abide by the Child Abduction Convention and the UN Convention on the Rights of the Child, with a view to effecting a prompt return of and access to the abducted child, and introducing joint custody after divorce. Diplomatic negotiations also took place between former Prime Minister Abe and the heads of Germany, France, and Italy. In today's globalized world, with an increasing number of cross-border family relationships, every state including Japan ought to observe the international standard of child protection and give form to the best interests of the child. Arguably, to improve the practice of the Child Abduction Convention, it is time for Japan to consider ratifying the 1996 Child Protection Convention, as well as the 2007 Child Support Convention and Maintenance Protocol.