

Recent Implementation of the 1980 Hague Convention: Japan's Experiences

Fourth Malta Conference on Cross-frontier Child
Protection and Family Law

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Concerns raised prior to joining the 1980 Hague Convention

Isn't the Convention:

- incompatible with our tradition and culture?
- compromising our sovereignty?
- harsh if the taking parent was vulnerable?
e.g. domestic violence, financial dependence

What we can now say (1)

The Convention is compatible with any tradition and culture because...

- ✓ it only requires that the merit of custody be decided at the country of habitual residence -- respecting tradition, culture and family values at the habitual residence;
- ✓ it does not require a Member State to change its internal law on custody in any particular way;
- ✓ it has already become a cross-cultural norm with 94 Member States.

What we can now say (2)

The Convention is not compromising our sovereignty because...

- ✓ it works both ways;
- ✓ it leaves the question of custody entirely to the country of habitual residence;
- ✓ it is about the best interest of the child, not as if the requesting country wins the child.

e.g. A child returned to Japan allowed at the Japanese Court to accompany TP to another country.

What we can now say (3)

Vulnerability is fully attended, for...

- ✓ if the vulnerability is established at the Court as a grave risk for the child under Article 13 I(b), the Court will not return the child;
- ✓ the support provided by the Japanese consuls have been expanded to help the vulnerable parents forego removals and to continue legal process in the habitual residence;
- ✓ the legal aid is usually available for parents in need.

What is more: benefits of the Convention

By providing stable and universal legal environment, the Convention:

- ✓ enables a rule-based solution by pointing to the legal forum where a cross-border parenting issue should be sorted out;
- ✓ respecting the right of access, avoids all-or-nothing confrontation pertaining to parenthood in a cross-border situation;
- ✓ provides an opportunity for a facilitated amicable solution;
- ✓ eliminates psychological and legal obstacles for temporary visits from one Member State to another;
- ✓ prevents possible removal / retention.

Framework for Implementation (1)

Service of Japanese Central Authority

- receives application and decides on assistance;
- finds – but not disclose – the location of the child;
- establishes communication with parents in Japan;
- facilitates parents' communication and efforts to resolve the issue;
- provides cost-free out-of-court mediation (ADR);
- provides cost-free translation for documentation to the Court;
- provides lawyer information and qualifies non-doms for legal aid;
- provides assistance for enforcement as required by the Court;
- facilitates safe return of the child;
- raises awareness to prevent wrongful removal & retention.

Framework for Implementation (2)

Cooperation required by a Central Authority

- Cooperation with national bodies
 - local authorities, immigration, schools, utilities, telecoms, child welfare office, police for provision of information
cf. local communities, social security number, postal service
 - securing and introducing lawyers and mediators with expertise
 - providing assistance for victims of violence

- Bringing in experts
 - inter-agency secondment (judge, family court consultant, immigration officer), legal experts, psychologists, social workers, language experts etc.

- Collaboration with other CAs
 - daily handling
 - capacity building including lawyers & mediators

Framework for Implementation (3)

Judicial Preparations

While the Convention does not decide on custody, cases may be complicated and the Court may be pressed for time. Therefore, it is useful to set up:

- implementation act, procedural models etc. for clarity and swift process;
- concentration of jurisdiction (Tokyo and Osaka for Japan), and hence expertise;
- court based conciliation
- network judges (2 judges appointed in May 2015 for Japan)
 - ✓ Respecting each other's system and preserving coherent implementation of the Convention in each legal system.
 - ✓ As the Convention does not place a uniform legal system and depend on existing system of each state, shared information and expertise among judiciaries are particularly valuable.

How many cases were there?

Figures for the first two years (the second year)

	Return	Access
In-coming (requested to Japan)	45 (<u>19</u>) From: US 11 (<u>7</u>), Australia 4 (<u>2</u>), France 4 (<u>1</u>), Germany 3 (<u>1</u>), Canada 2, UK 2 (<u>1</u>), Belgium 1, Columbia 1 (<u>1</u>), Fiji 1 (<u>1</u>), Italy 1, Korea 1 (<u>1</u>), Russia 1, Singapore 1, Spain 1, Sri Lanka 1, Switzerland 1, Turkey 1, Dismissal 8 (<u>4</u>)	75 (<u>20</u>) From: US 39 (<u>6</u>), UK 6 (<u>1</u>), France 5 (<u>2</u>), Australia 4 (<u>1</u>), Canada 4 (<u>2</u>), NZ 3 (<u>1</u>), Singapore 3 (<u>2</u>), Mexico 2 (<u>2</u>), Costa Rica 1, Germany 1, Dismissal 7 (<u>3</u>)
Out-going (requested from Japan)	39 (<u>21</u>) To: Thailand 6 (<u>5</u>), Brazil 4 (<u>2</u>), Russia 4 (<u>1</u>), Korea 3 (<u>2</u>), US 3 (<u>2</u>), Germany 2 (<u>1</u>), Canada 2 (<u>1</u>), Belarus 1 (<u>1</u>), France 1, Italy 1, Peru 1, Romania 1 (<u>1</u>), Slovakia 1, South Africa 1, Spain 1, Sri Lanka 1 (<u>1</u>), Sweden 1 (<u>1</u>), Switzerland 1, UK 1 (<u>1</u>), Dismissal 3 (<u>2</u>)	23 (<u>9</u>) To: US 5, Russia 3, Canada 3 (<u>2</u>), Germany 2 (<u>2</u>), Ukraine 2 (<u>1</u>), Thailand 2 (<u>1</u>), Australia 1 (<u>1</u>), Hong Kong 1 (<u>1</u>), Korea 1, Netherlands 1, Poland 1, Uruguay 1 (<u>1</u>)
Total	84 (<u>40</u>)	98 (<u>29</u>)

Achievements so far

- All the children located for the qualified applications.
- 14 Returns from Japan, 12 Returns to Japan
 - From Japan: 6 voluntary (Belgium, Canada*, France, Germany, Singapore*, US*), 1 ADR-based (Canada), 5 conciliation-based (Fiji, France, Germany, Spain, US), 2 Court-ordered (Canada, Sri Lanka)
 - * as a result of reunification efforts by means of access assistance
 - To Japan: 5 voluntary (Canada, Russia, Thailand, UK*, US), 7 court-ordered (France, Germany, Hong Kong*, Spain, Switzerland, UK*, US)
 - * directly applied to the court without the involvement of JCA
 - 7 incoming* and 4 outgoing cases settled with not returning the child.
 - *1 (France) dismissed and 1 (Turkey) refused by the Court. Others are consensual.
- Preventive effect observed
 - figures to stay at around 20 both ways
 - 1 snap return following LBP's notification to TP of application

Some useful elements for settlement

- Assisting the re-establishment / facilitation of communications between the parents
- Encouraging and supporting the parents' efforts toward reunification
 - supervised visitation, web access (mimamori) etc.
- Easing the parents' anxiety on foreign procedures
 - CAs to closely communicate and have common understandings
 - Co-mediation
- Providing appropriate support for legal action
 - JCA does not represent either party – emphasis on amicable solution
 - Legal aid, lawyer referral service, translation etc.

Especially in Early Days

- Avoid, but be prepared for politicization;
 - ✓ domestic backlash
 - ✓ handling of predating cases – no retrospective application, but best use of amicable solution in support of access can lead to reunification
 - ✓ helping both sides for amicable solution professionally
- Make most out of international and intra-national cooperation, including consular services;
- Explain and clarify legal system and requirements; e.g. legal procedures including filing, lawyers, mediation etc.
- Beware of Multi-disciplinary nature of works.



Thank You!

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http://www.mofa.go.jp/fp/hr_ha/page22e_000249.html