

# Parental authority (custody rights) in international marriage and the Hague Convention seminar

(PRELIMINARY VERSION)

Date: 15.May.2018 (Wed.) [14:00 - 15:30]

Place: Paris Japan Cultural Center, ground floor small hall

Organizers: Ministry of Foreign Affairs of Japan / Japan Federation of Bar Associations

Language: Japanese

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\*00:05:48 Embassy of Japan in France: Mr. IKEDA

\*00:08:35 Japan Federation of Bar Associations - French survey team leader :  
Lawyer Ms. Kazue OKUNI

\*00:15:05 Japan Federation of Bar Associations - Working Group Related to  
Hague Convention – Vice-President: Lawyer Toshiteru SHIBAIKE

00:15:05- Japan's Divorce System and The Hague Convention learning in Case  
Studies [Lawyer SHIBAIKE]:

00:16:45- Introduction of the cases

00:18:20- Explanation of the International jurisdiction of Justice in Divorce

00:21:07- About the start of procedure based on the Hague Convention

00:22:39- Explanation of the Hague Convention (Principle, it is not for criminal  
procedures, it is only for civil procedures.)

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borders, and that the nationality of couples is irrelevant, etc.

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- 00:40:21- Explanation that child's intention may become a Refusal of Return of Child.
- 00:41:21- Specific methods for making a child's objection to be a Refusal of Return of Child.
- 00:41:54- About child age whose child's intention is considered as a Refusal of Return of Child.
- 00:42:42- (on Refusal of Return of Child) "there is no need to give up." (Assuming removal of the child, it is contrary to the Hague Convention's principle of preventing the removal of children.)
- 00:44:10- Because a Refusal of Return of Child is hard to be admitted, "So that you have to do what you can do in France before you come back," (Assuming removal of the child, it is contrary to the Hague Convention's principle of

preventing the removal of children.)

----- The followings, there is no transcript yet. -----

\*00:45:55 Ministry of Foreign Affairs of Japan - Hague Convention Division -  
Chief clerk : Ms. MATSUDA

Law Firm Hashimoto & Partners: Lawyer Mr. Akira HASHIMOTO

Law Firm Hashimoto & Partners: Lawyer Ms. Yuki IWAMURA

Note: The line beginning with "#" means citation. Important parts are underlined. In Lawyer SHIBAIKE seminar, he tends to interchange "the mother" in the case study and a mother as seminar audience which means "you" in general.

Record elapsed time- Summary of the part [Speaker]:

00:01:58- Explanation of the venue [Mr. KATAGIRI of Paris Japan Cultural Center]:

(This part is omitted.)

00:05:48- Opening remarks [Consul General Manager Naoya IKEDA, Embassy of Japan in France]:

(This part is omitted.)

00:08:35- General Manager of Japan Federation of Bar Associations - French survey team Greetings [team leader Lawyer Ms. Kazue OKUNI]:

(Partially omitted.)

The Hague Convention aims to prevent removal of the child across borders before it happens.

(Partially omitted.)

00:13:00- Introduction of panelists [Consul General Manager Naoya Ikeda, Embassy of Japan in France]:

(This part is omitted.)

00:15:05- Japan's Divorce System and The Hague Convention learning in Case Studies [Lawyer SHIBAIKE]:

(No translation yet.)

00:16:45- Introduction of the cases

(No translation yet.)

00:18:20- Explanation of the International jurisdiction of Justice in Divorce

(No translation yet.)

Generally speaking, if you ask me that you can divorce or get a trial divorce in Japan, the answer is "No". So while I'm talking about something like this, I really understand how much you want to divorce, and you want to live in Japan. However, from the perspective of your husband, he has been separated from your child and he wants your and his child to come back soon. The story obviously goes whether keep staying in Japan is okay or not.

00:21:07- About the start of procedure based on the Hague Convention

While doing this, on the second page, you will receive a letter. Well, before the letter, harassing emails come from your husband. Harassment, offensive emails, "Why don't you come back.", "What happens.", "Why don't you contact me.", it will be like that. Well, you are freaking out; you are shrinking, not replying. And a letter from the Ministry of Foreign Affairs comes by postal service. It is a letter about procedures under the Hague Convention. A letter comes. It is written that it is quite important notification. There are only 10 sheets of paper, so it looks a bit difficult. This is a story that goes in the first place. "Am I going to lose my child?" This is what is called the

Hague Convention. So, what happens when your husband takes the procedure of the Hague Convention is that there are few cases a notification suddenly comes from a court. Rather, this notification comes from the Ministry of Foreign Affairs in general. Then, about detailed procedures will be explained by Mr. MATSUDA after this, first of all, the Ministry of Foreign Affairs will assist the mothers in Japan, support the fathers and the mothers, respectively, "If you would like to return your child, please do it", "Is there any concern?", you can assume it as a support, a letter comes from such a place. However, this is the first report of a Hague Convention beginning. So, if you receive this, do not ignore it. You must respond by all means. Since the contact dead line is written, you must contact properly. Or if you are in Japan, please consult a nearby lawyer. If you do not proceed properly at this stage, you will run out of time after the Hague Convention procedure has been filed.

00:22:39- Explanation of the Hague Convention (Principle, it is not for criminal procedures, it is only for civil procedures.)

So, I would like to explain in just three minutes what the Hague Convention is at first. As I write to this resume, it is on "No.2 About the Hague Convention". At first, the Hague Convention is not for deciding whether the father or the mother is good for the child at all. To the last, deciding such a thing is a story that you have to decide properly in the place where the child lived in the first place. For example, you lived in France for 5 years with your child. Say, you came back to Japan suddenly, and you claim "I have parental authority. The father is no-no." in Japanese court though, it would end up that there is no information at all, the kindergarten of your child is in France. So that, in principle, it is the purpose of the Hague Convention that it should be decided at where he/she originally lived, and come back from there. In other words, once you bring your child, you should bring him/her back. And it is not to return to the father, to return to the country where he/she originally lived, to take procedures properly in that country is the purport of the Hague Convention. Is that okay? First of all, it is called "habitual residence", it is a procedure to return the child to the place where he/she originally lived.

However, I will explain later, there are exceptions: if there is a danger that the child may suffer physical or mental harm in particular, or if the child refuses by himself/herself, it is called "Refusal of Return of Child". It is not necessary to return the child exceptionally, such a procedure.

And, the Hague Convention itself is not for a procedure to be caught, detected, or arrested. It is a civil rule to the end. It is a story just to return the child or not.

00:23:58- The Hague Convention only deals with the removal of children across borders, and that the nationality of couples is irrelevant, etc.

Well, I wrote Point 7 on 2nd page, basically this is only removal of children across borders, so it is irrelevant to divorce between Japanese couples in Japan, or Japanese and foreign couples in Japan, or in France at all. It is for removal of children across borders. However, this is not limited to international marriage, or a partner who is not married. Alternatively, Japanese couples, who may come today, for example, you are resident stayed, have a Japanese husband. Even if your husband is Japanese and you are here in France, and you go back to Japan with your child, it will be a proper Hague Convention incident. This has nothing to do with nationality at all. Please be sure to remember that even Japanese couples would be applied.

Then, after returning to Japan, you may be thinking that it will be okay if you hide. However, the Ministry of Foreign Affairs searches your child's location properly, and you will end up to be found. There is basically no missing, so hiding is wasteful.

Well, I talked about it a while ago. It is not for deciding a parental authority, custody rights, whether the father or the mother is good for the child at all.

00:24:56- About the principle to return within six weeks under the Hague Convention

(No translation yet.)

00:25:24- The Hague Convention is a procedure to return to the country, not to the left behind parent.

(No translation yet.)

00:25:45- Contacting for "you may not have to return even if the Hague Convention is raised"

So, what you want to know is that if you go back to Japan, you may not have to return even if the Hague Convention is raised. Or you may have already been consulted by someone and told that "In such a case, it would be fine". I would like to talk a little bit about whether it is true or not.

Actually, my office receives oversea calls quite some times; some people say "I asked a Japanese administrative scrivener on the phone. Then I was told it would be okay to return." In the first place, administrative scrivener is not competent at all. Please call a lawyer properly. Or please call the Ministry of Foreign Affairs properly. It is fine to ask about the Hague Convention in France, but French lawyers know only French law. It is in Japan that the Hague Convention issue arises. It is useless to ask a French lawyer whether your child does not have to come back when you take your child back to Japan, because it is Japanese courts to decide. It is just recently, there was a lawyer in France who said "If the baby is little, the Hague Convention is fine even if you go back to Japan from France." I am going to talk that this is a misunderstanding, so please listen.

00:26:52- Explanation of it hardly recognize as a Refusal of Return of Child that your child adapts to new environment.

(No translation yet.)

00:29:41- Explanation of it hardly recognize as a Refusal of Return of Child that your husband said "Take our child and leave from France".

(No translation yet.)

00:31:45- Explanation of it hardly recognize as a Refusal of Return of Child that there was DV from your husband.

(No translation yet.)

00:35:28- Specific method for making DV related evidence as a Refusal of Return of Child.

Then, in the case of France, there are proper laws in the first place, so you might think it is impossible (to be a Refusal of Return of Child), though, it is basically case by case. For example, "Protection orders were taken in France. Nevertheless, my husband neglected and came to my house.", or "Even when the police came again and again, my husband did not hear that.", or "When I went to the shelter, it was full at all, they did not let me in.", if such a situation actually happened, and if you can prove it, it is called

protection requirement, this requirement can be satisfied. So do not judge by yourself that you do not have to return your child because of the violence. Basically, it is also very important to consult with a proper expert and what kind of evidence is available. No matter how much violence you say, it ends up matter of whether you say or not. It is also important to come back with proper evidence. For example: You go to a hospital in France and have a hospital personnel write a medical certificate properly. Or if you are in a shelter, have a shelter personnel write a certificate. Or if you go to the police, have the police write the history record of your consultation with the police, so on. I would like to explain these points from Hashimoto office lawyers again. It is necessary to bring back such evidence properly.

00:36:33- Explanation of mother's no returning alone hardly recognize as a Refusal of Return of Child

(No translation yet.)

It is sorry to say, even if you refuse to return, it alone cannot be admitted as a Refusal of Return of Child.

00:38:30- Specific methods for making the mother's no returning to be a Refusal of Return of Child. (1)

However, as various comprehensive situations, I write in this "1" for example, even if you were returning to habitual residence country which is France, stay qualification, for example: What kind of visa can you have for returning. If you have already divorced, you cannot remain in France. Or you cannot work at all, such issues are considered. In fact, is it possible for the child to go to school? Or is there any support available from family members, friends, or support agencies? Or as circumstances of father side: If he has alcoholism, drug addiction, mental illness, or such mental and physical conditions. Considering such various circumstances comprehensively, and if the judge decides that the child returning is not appropriate, it will be a Refusal of Return of Child. However, there are almost no cases that have been recognized in such a practice. In fact, everyone argues "I think it is impossible for my husband." Of course, your husband says "I'm okay". Well, whether it's okay or not, in the six-week trial of the Hague, there is no time to judge carefully, so it may be judged that there is no problem in the end, well, it will be judged so. I do not want you to think this point too easily. On the contrary, it is necessary to bring back such records if the father is really alcoholic, heart failure (?), or caught up with drugs.



00:39:40- Specific methods for making the mother's no returning to be a Refusal of Return of Child. (2)

I write in the parenthesis, what kind of situation makes the mother's no returning to be a Refusal of Return of Child. For example: "When I get back to France definitely, I will get arrested. An arrest warrant has been issued in France, I will get caught absolutely when I get back," or something like that. Or, "I cannot live in France, nor can I expect to receive any support." Actually I think that there are various social security, so this is quite difficult to say in France, but such a situation. Or, "I will definitely die if I come back", it is difficult to say such a thing by yourself though, in case there is a danger of suicide or self-harm is extremely high, in such cases, the situation in which the mother does not return is considered as a reason of Refusal of Return of Child. This is the reality of the current court practice (in Japan).

00:40:21- Explanation that child's intention may become a Refusal of Return of Child.

It's up to six, yes six. It has been denied all one, two, three, four, five, six, so far, "I have no choice but to return. But in the end, my son is saying that he no longer wants to go back to France." It's your child's intention. Your child is saying he/she does not like it. "Do I still have to return my son?" This is the seventh case. I write in the case. It is the seventh of the case. The 6-year-old eldest son is this one, saying that he does not want to return to France. It is the part of "Is the opinion of the child respected?" (on the resume), and, the article is the article 28 paragraph 1 item 5 of the resume. It is the bottom of page 3. There is a provision that if your child says that he/she hates properly and refuses, you don't have to return your child.

# Citation in the transcript

# Act for Implementation of the Convention on the Civil Aspects of International Child Abduction

# (Grounds for Refusal of Return of Child, etc.)

# Article 28 (1) Notwithstanding the provisions of the preceding Article, the court shall not order the return of child when it finds that any of the grounds listed in the following items exists; .....

# .....

# (v) The child objects to being returned, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development;

I read it, "The child objects to being returned to the habitual residence country, in a case where it is appropriate to take account of the child's views in light of his/her age and degree of development", as written. It is not a case that your child just says that he/she does not like it. First of all, it would be to first see that he/she is at such an age as he/she is able to express him/her intentions, and he/she is well developed. And on top of that, it should be the case that he/she says it as his/her own intention.

00:41:21- Specific methods for making a child's objection to be a Refusal of Return of Child.

Well, first of all, in essence, it is not "I hate such a father". What he/she says is he/she does not want to return to the country which is France. Do you see it? There is a situation where he/she might not like his/her father, even though, he/she has a lot of friends in France. If he/she loves France, the child's objection does not accepted in the first place.

On the other hand, he/she likes his/her father, even though, he/she will be bullied when he/she will come back, for example, he/she is discriminated against at school, in such a case, the child's objection will be accepted. The point is that he/she does not want to be returned to France.

00:41:54- About child age whose child's intention is considered as a Refusal of Return of Child.

(No translation yet.)

00:42:42- (on Refusal of Return of Child) "there is no need to give up."

"Well, now, I cannot meet all the return refusal reasons. Everything is useless. Then, if a trial is raised in Japan, will it be absolutely returning?", that is not true. In fact, this is to negotiate. Basically, Japanese court opens mediation when the Hague trial is raised. It is used as so-called divorce mediation's mediation, your husband basically comes to Japan and have a negotiation. Among the negotiation, assuming you remain in Japan, assuming you return to France, divided into both patterns to organize your thought. You will have to think of many things: If you return to France, how to live there, how to custody your child. If you remain in Japan, your husband would be asked what to do: If he comes to Japan to meet, how to meet the child, asking your

husband. It takes time. Among the negotiation, for example, a father often tells voluntary that "It is okay to live in Japan because our child is accustomed to Japan." Or, conversely, there is also a mother who would like to negotiate properly with her husband in France, to think about living in France, and to return there. So, in fact, it is not decided at 0 (%) or 100 (%) in the Hague trial, but during the negotiation, you make good conditions, good arrangements, and you will return or not, that is the feature of Japanese courts and the case of the Hague in Japan. So, in this case, you already come back to Japan, and even you are told by a lawyer that there are no facts for Refusal of Return of Child, there is no need to give up. Rather, I would like you to negotiate properly and do your best to reach the desired conclusion.

00:44:10- Because a Refusal of Return of Child is hard to be admitted, "So that you have to do what you can do in France before you come back,"

However, since you are the one who has not come back (to Japan) yet, it is our advice today to say, I'm sorry if you come back, I'm really sorry. I have no choice but to tell you properly that you are going to have to return your child. Unless the reason is to a great extent, a Refusal of Return of Child is not satisfied. It is Japan's current practice. Other countries are the same. And, because the forced execution system is poor, there may be such a story that you can escape. But there is no such a thing at all. Basically you have to follow the court order. So that you have to do what you can do in France before you come back, or I would like you to think about your own life. I gave a brief overview and explained the Hague at the end. After this, it will be about French law. Thank you very much.

00:45:55- (No transcript yet.)

Location of the Recording:

<http://www.bachome.org/news/caught-japan-seminar-on-how-to-abduct>