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The Difficulty of Enforcing American Family Law Judgments in Japan

By James B. Kildunne*

I. Introduction: The Nightmare Scenario

In 2009, American Christopher Savoie experienced every parent’s nightmare: someone had taken his children away from him.1 His ex-wife Noriko had taken the children to Japan, despite a court order requiring her to remain in the United States.2 Similarly, Japan did not recognize an American arrest warrant issued for Noriko Savoie.3 Mr. Savoie, who had Japanese citizenship, traveled to Japan in order to reclaim his children.4 After collecting his children, Mr. Savoie headed to the nearest U.S. consulate, but before he could enter he was arrested at the front gate on child abduction charges.5 Japanese authorities agreed to drop the child abduction charges in exchange for Mr. Savoie’s agreement to return to the United States without his children.6

Samuel Lui faced a similar situation.7 After a California court

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2. Id.
3. Id.
4. Id.
5. Id.
6. Id.
granted him custody of his two-year-old son, Lui's Japanese wife left for Japan, taking their son with her. Although Japan's Supreme Court accepted the validity of Mr. Lui's custody order, his wife retained custody of their child. Lui found himself filing proceedings in the Osaka Family Court just to seek the right to visit the son who was supposed to be living in California with him. Eventually, Mr. Lui agreed to a mediated settlement with his wife. In exchange for limited and unenforceable visitation, Mr. Lui agreed to give up custody of his son.

The U.S. Embassy in Japan warns Americans traveling to Japan that foreign custody agreements are not automatically enforceable in Japan. This fact can often have heartbreaking consequences for parents who have been granted custody in the United States or elsewhere only to find that they have effectively lost all custodial rights when the other parent relocates to Japan with the child.

As of January 7, 2011, the U.S. State Department's Office of Children's Issues has tracked 230 cases involving 321 American children abducted or wrongfully retained in Japan since 1994. There are presently 100 active international child custody cases involving 140 American children. The U.S. Embassy in Tokyo reports there are also 31 cases involving Americans in which both parents and children reside in Japan, but one parent has been denied access to the children. While parents have been successfully reunited with their displaced children through voluntary measures or agreements between the parents themselves, there is no record of a successful outcome reached by way of a favorable Japanese court order.

There are several factors that can help illustrate why

8. Id.
9. Id.
10. Id.
11. Id.
12. Id.

15. Id.
16. Id.
17. Id.
international parents face such a difficult task in reuniting with their abducted children in Japan. First, and perhaps most importantly, Japan is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. 18 "Allowing a child to be taken to Japan as part of a custodial or visitation arrangement entails the risk that, once there, the child may be denied all further contact with the other parent." 19 Similarly, there are few remedies available if the abducting parent never returns to the United States. 20

Second, Japan's family law system differs very much from its American counterpart and does not afford the same level of protection of rights of parents and children in divorce as would be expected in the American framework. 21 Unlike in the American system, there is no system to allow for joint custody of children. 22

Third, the lengths to which Japanese society values so-called "Japanese-ness" over other cultures put foreign parents at a distinct disadvantage. In Japanese, Nihonjinron, or "theory of Japanese people," is the idea that the Japanese people are culturally, ethnically, and geographically distinct from the rest of humanity. 23 Taken to the extreme, this view often fuels xenophobia, chauvinism, and discrimination against foreigners inside of Japan. 24

An American parent, fearful that a co-parent might try to abduct a child and abscend to Japan, can make use of measures in place at both the local and federal level to attempt to prevent such an occurrence. 25 The tools available are suboptimal, however, because they require a parent know that a co-parent seeks to take a child to Japan, and decisions made in the United States are not readily enforceable in Japan.

18. Escobedo, supra note 1.
20. Id.
21. Id.
22. Id. at 212.
24. Id. at 214.
This Note argues that in order to effectively address this problem, the United States should apply pressure on Japan to, first, adopt the Hague Convention on the Civil Aspects of International Child Abduction and, second, institute domestic changes to comply with international norms and expectations. Part I focuses on Japanese family law in the international context. Part II examines legal restraints, functional limitations, and cultural norms that dictate family law outcomes in Japan. Part III describes measures in place in the United States designed to prevent international child abduction. Finally, Part IV introduces recommendations for change.

II. Japanese Family Law in the International Context

A. The Hague Convention

The objectives of the Hague Convention on the Civil Aspects of International Child Abduction (Convention) are "to secure the prompt return of children wrongfully removed to or retained in any Contracting State" and "to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States." 26 The Convention applies to all children in Contracting States who are habitual residents until they reach the age of 16. 27 Article 3 of the Convention provides

The removal or the retention of a child is to be considered wrongful where –

a) it is in breach of rights of custody attributed to a person, an institution or any other body, either jointly or alone, under the law of the State in which the child was habitually resident immediately before the removal or retention; and

b) at the time of removal or retention those rights were actually exercised, either jointly or alone, or would have been so exercised but for the removal or retention.

The rights of custody mentioned in subparagraph a) above, may arise in particular by operation of law or by reason of a judicial or administrative decision, or by reason of an agreement having legal

27. Id. art. 4.
effect under the law of that State. 28

The Convention seeks to protect both "rights of custody" and "rights of access." 29 "Rights of custody" include the right to determine the child's place of residence and rights relating to the care of the child. 30 These stand in contrast to "rights of access" which include the right to take a child for a limited period of time to a place other than the child's habitual residence. 31 The Convention's inclusion of "rights of access" broadens its effect beyond just primary custodians of the child in question to those parents or guardians that may not have primary custody but still have a legal right to see the child.

The Convention establishes standard protocols and procedures for Contracting States to follow when an incident of international child abduction occurs, and these standards stress cooperation between Contracting States and a return of the abducted child to the legally recognized guardian. 32 For example, the Convention focuses on the prompt return of the child back to its habitual residence. 33 The Convention seeks to avoid situations in which one Contracting State assesses the merits of whatever custody agreement had been put into effect previously in another Contracting State. 34 This prevents abducting parents from relitigating their child custody disputes in foreign jurisdictions they believe may be more favorable to them.

B. Japan as an Outlier in the International Community

Japan is not a signatory to the Convention. 35 However, in 2011 the Japanese Cabinet approved a plan to bring its nation's family law regime in line with international norms. 36 The plan includes putting the Foreign Ministry in charge of the "cases related to

28. Id. art. 3.
29. Id. art. 5.
30. Id.
31. Id.
32. Id. arts. 6-20.
34. Id.
35. Escobedo, supra note 1.
36. Id.
international child abduction, including finding abducted children, taking measures to prevent child abuse and advising parents on the voluntary return of children.”

Were the Japanese government to put these reforms into place, though, there is no sure timeline if or when Japan would eventually ratify the Convention itself. Japan may adapt its laws to make them appear to be in compliance with international norms, but without ratifying the Convention, there is little for wronged parents to do to compel Japan to abide by the custody agreements in effect in their home countries. Even more disheartening is the possibility that even if Japan were to successfully ratify the Convention, it does not necessarily mean a coordinated change in Japanese family law. Colin P.A. Jones explains:

[[I]t is possible that Japan’s accession to the Hague Convention may make little if any practical difference in improving the situation for foreign parents seeking the return of children abducted to Japan. In fact, it might even make the situation worse by removing a red flag to judges in foreign countries who might otherwise be inclined to disallow custody or visitation arrangements that involve travel to Japan.]

Even if Japan were to ratify the Convention, Japanese custody cases are often all-or-nothing affairs. Currently, Japan does not grant joint custody, nor does it recognize joint custody, even in cases where Japanese courts apply foreign law that allows it. There is no strongly established Japanese analog for the Convention’s “rights of access” provisions, which raises the possibility that ensuring parental access for nonprimary guardians would be difficult even with Japan acting as a Contracting State under the Convention. Similarly disheartening, is that Japanese judges, in contrast to their American colleagues, have little power to compel litigants to comply with judgments. Judges have scant authority to find non-complying parties in contempt, and the Japanese police have a

37. Id.
38. Id.
40. Jones, supra note 19, at 213.
41. Id. at 212-13.
42. Id. at 177.
policy of staying out of civil affairs.\textsuperscript{43} Jones doubts that even if empowered to do so, Japanese law enforcement authorities are not likely to start arresting Japanese parents who fail to comply with court orders to return their children to foreigners.\textsuperscript{44}

\section*{III. Legal Mechanisms, Functional Limitations, and Cultural Norms Prohibiting the Return of Abducted Children}

\subsection*{A. Legal Mechanisms Preventing Parental Access to Children}

Parents in child custody disputes in Japan, both foreign and Japanese, face three choices. The options: give up their attempts to see their children, hope for cooperation with the custodial parent and submit to the terms dictated by the custodial parent, or attempt to gain access to the child through family court proceedings that require mandatory mediation sessions.\textsuperscript{45}

Japanese family law differs from family law in the United States in various ways, and these differences have a pronounced influence in the outcomes of familial disputes. In contrast to American jurisdictions that may have extensive codes providing for the authority of courts to resolve divorce and custody proceedings, there is sparse legal authority to rely upon in Japan.\textsuperscript{46}

A couple of articles in the Japanese Civil Code give Japan’s judges the authority to decide custody in divorce cases based on the best interests of the child. But there are virtually no provisions expressing what those interests are (California’s Family Code, by comparison, states clearly that best interests of a child involve frequent and continuous contact with both parents regardless of their marital situation).\textsuperscript{47}

The foundation for the Japanese family law regime is the \textit{ie}.\textsuperscript{48} The \textit{ie} is “the patrilineal, patriarchal chain of authority extending between the eldest sons of successive generations.”\textsuperscript{49} Most family law dispute resolution perpetuates the concept of \textit{ie}, and seeks to

\begin{thebibliography}{99}
\bibitem{43} Id at 178.
\bibitem{44} Jones, \textit{supra} note 39, at 358.
\bibitem{45} Jones, \textit{supra} note 19, at 229.
\bibitem{46} Jones, \textit{supra} note 7.
\bibitem{47} Id.
\bibitem{49} Id.
\end{thebibliography}
reinforce a uniform, traditional model for Japanese families.\textsuperscript{50} One manifestation of this is the jurisdiction for family courts in Japan, which is quite broad compared to other courts in the Japanese judiciary or even family courts of other countries. In Japan, family courts the authority to hear any dispute between relatives, even those not based on legal causes of action.\textsuperscript{51} "For example, the family court will handle the case of a daughter who thinks that her mother calls her too frequently or that of brothers who do not agree about the division of proceeds from a sale of their jointly owned house."\textsuperscript{52} Also significant is that the Japanese family court does not have to abide by any strict legal criteria when deciding disputes, except for the caveat that it cannot approve any agreement that would run contrary to existing Japanese law.\textsuperscript{53}

The family courts broad authority to reinforce a uniform family model means that family arrangements that do not fit that model are disfavored. Japan does not generally recognize joint custody of children.\textsuperscript{54} Japanese courts have historically not granted visitation rights to the noncustodial parent.\textsuperscript{55} Traditionally, the concept of engiri dominated post-divorce relationships.\textsuperscript{56} Engiri is the concept of severing all ties once a marriage is over and the law rarely intervened.\textsuperscript{57} Japan views the family as closed off from the rest of the world.\textsuperscript{58} Once a parent becomes a noncustodial parent after a divorce, society views that parent as no longer part of the familial unit.\textsuperscript{59} Moreover, Japanese society believes continued contact with the noncustodial parent has a negative influence on the child because of the possibility the noncustodial parent may have a different lifestyle and different methods of disciplining the child than the custodial parent.\textsuperscript{60} Japanese courts have hesitated to adopt visitation agreements for divorced parents because Japanese society

\textsuperscript{50} Id. at 2.
\textsuperscript{51} Id. at 6.
\textsuperscript{52} Id.
\textsuperscript{53} Id. at 7.
\textsuperscript{54} Jones, supra note 19, at 212-13.
\textsuperscript{55} Id. at 229.
\textsuperscript{56} Takao Tanase, Divorce and the Best Interest of the Child: Disputes over Visitation and the Japanese Family Courts, 20 PAC. RIM L. & POL’Y J. 563, 576 (2011).
\textsuperscript{57} Id.
\textsuperscript{58} Id. at 570.
\textsuperscript{59} Id.
\textsuperscript{60} Id.
has traditionally viewed such agreements as "atypical" and "selfish."\textsuperscript{61} Courts will also often requests for visitation arrangements by the noncustodial parent when the custodial parent protests on the grounds that visitation in those circumstances would place undue burden upon the child.\textsuperscript{62}

There has been a modern trend to allow visitation rights, but such arrangements remain rare and require the help of especially motivated family court mediators.\textsuperscript{63} Even in the rare occurrence when visitation is granted, there are still severe limitations on the amount of time a noncustodial parent is allowed to spend with their child.\textsuperscript{64} In 2009, Japanese court records showed "that only 14% of cases allowed overnight stays and only 52% permitted visitation once or more per month, which is generally interpreted as visitation rights of only one day per month."\textsuperscript{65} Parents who find themselves without legal or physical custody face a grim fate. Parents without legal or physical custody have essentially no rights regarding their children.\textsuperscript{66} "They may not know where their children live, and custodial parents can change the children's names and have the children adopted by either a grandparent or a new spouse without the non-custodial parents' consent."\textsuperscript{67}

Japan has not articulated a clear public policy that frequent and continuous contact with the noncustodial parent is in the best interest of the child.\textsuperscript{68} In fact, just the opposite has occurred. The view that the family is a single unit shut off from the rest of the world where the parents control the children dominates.\textsuperscript{69} Many within Japan believe this family model promotes the welfare of children.\textsuperscript{70} Courts view the noncustodial parent as outside the enclosed world of the familial unit.\textsuperscript{71} Courts must guard against unnecessary "intrusions" by the noncustodial parent into the life of

\begin{itemize}
\item \textsuperscript{61} Bryant, \textit{supra} note 48, at 20.
\item \textsuperscript{63} Bryant, \textit{supra} note 48, at 17.
\item \textsuperscript{64} McCauley, \textit{supra} note 62, at 592.
\item \textsuperscript{65} \textit{Id}.
\item \textsuperscript{66} Jones, \textit{supra} note 19, at 215.
\item \textsuperscript{67} \textit{Id}.
\item \textsuperscript{68} \textit{Id}. at 219.
\item \textsuperscript{69} Tanase, \textit{supra} note 56, at 570.
\item \textsuperscript{70} \textit{Id}.
\item \textsuperscript{71} \textit{Id}.
\end{itemize}
the child. 72 Abducting parents can often take advantage of the time it takes to resolve a custody dispute by enrolling an abducted child into a new school, thereby creating a "new" status quo that, having been established, the family court will hesitate to alter or disrupt. 73 Tasako Tanase sees this framework as ultimately denying noncustodial parents their parental rights and thwarting the will of children who often have a keen desire to maintain a relationship with their parent. 74

B. Functional Limitations For Noncustodial Parents Seeking Custody in Japan

Attorneys in Japan must pass the notoriously difficult bar exam, which in 2002 had a pass rate of just 2.5%. 75 Out of the relatively small pool of individuals who successfully become attorneys, few lawyers in Japan specialize in family matters. 76 In addition, many family law judges feel that family court lacks glamour. 77 They commonly complain they are not hearing "important cases" and resent not hearing more "important trials." 78 Many feel their careers are being sidetracked, and they hope to avoid another family court posting in the future. 79 It is not uncommon for disfavored judges to find themselves posted to remote areas or in family court, where long tenures might indicate a stalled career. 80

Even supposing a foreign parent seeking to regain custody of his or her child happens to land a judge that happens to be enthusiastic about family law, he or she is in for another twist unique to Japanese family law proceedings. For many family law disputes, parties must attend mediation before they can file their causes of action in the district court. 81 Judges often only attend the concluding mediating session, which results in mediations being led

72. Id.
73. Jones, supra note 39, at 353.
74. Tanase, supra note 56, at 570.
76. Bryant, supra note 48, at 6.
77. Jones, supra note 19, at 181.
78. Id.
79. Id.
80. Jones, supra note 7.
81. Bryant, supra note 48, at 8.
by mediators.\textsuperscript{82}

To qualify to become a mediator, one must simply be over the age of forty and provide evidence of good judgment and sound morals.\textsuperscript{83} In practice, though, mediators often differ substantially from those who come to them for mediation proceedings because they come from the upper class and chosen by the Japanese Supreme Court based on recommendations from individuals the Supreme Court respects.\textsuperscript{84} "Given their narrow demographic and lack of formal training, mediators are a source of dissatisfaction for mediation participants."\textsuperscript{85} Often mediators are not sophisticated enough to recognize complex psychological and legal issues before them.\textsuperscript{86} Since judges often do not attend most of the mediation sessions, they rely upon information provided to them by the mediators, who in turn can shape the information to achieve a result they believe to be appropriate.\textsuperscript{87}

There are no clearly articulated guidelines for determining which parent should be granted custody other than a nebulous "best interests of the child" standard, with a few exceptions.\textsuperscript{88} One notable exception to the lack of guidelines Japanese courts use is that they generally favor the mother when they award custody.\textsuperscript{89} Another very important exception to the family court’s lack of set guidelines is the policy of maintaining a Japanese identity for children of bicultural or multicultural relationships.\textsuperscript{90} In the majority of cases, the Japanese parent is awarded custody at the expense of the non-Japanese parent.\textsuperscript{91} This preference for maintaining a Japanese identity for the child even influences the other mandate for generally awarding custody to the mother.\textsuperscript{92} Cases, although extremely rare, do exist where courts grant custody to the non-Japanese parent if the child was very young, the non-
Japanese parent was the mother, and, as a condition for retaining custody, the mother agreed that the child be raised with an exclusively Japanese identity. Without a comprehensive, legally mandated set of criteria, the discretion of the family court to determine what the best interests of the child are is very broad.

Another difficulty for parents seeking to litigate for custody is the fact that each matter for which family court action is sought, divorce, visitation, child custody, support, etc., is its own cause of action which carries with it its own mediation requirements. Some parties may choose to forgo court proceedings altogether because they carry with them the possibility that the family court proceedings will result in the formal termination of rights or the denial of visitation altogether. As Bryant points out, it is significant that the structure of Japanese family law mediations creates an atmosphere of animosity and antagonism because parties enter proceedings expecting a judicial solution that could turn into an all-or-nothing affair.

C. A Culture of Discrimination

Lurking behind this analysis of Japan’s family law is the ugly truth that discrimination, particularly discrimination against non-Japanese, remains a problem in modern Japan. In 2010, the U.N. Committee on the Elimination of Racial Discrimination announced that Japan’s record on racism had improved, but that there was also still room for progress. In one visit, a U.N. official commented “that although the Japanese government had organized his trip, he felt many officials failed to recognize the seriousness of the racism and discrimination minorities suffered.”

Japan’s population stands at approximately 127 million people. Of that number, 98.5% are ethnic Japanese. Estimates

93. Id.
94. Jones, supra note 19, at 218.
95. Id. at 191.
96. Id. at 229.
97. Bryant, supra note 48, at 6.
put the number of foreigners living in Japan at around 2 million.\textsuperscript{102} For centuries, Japan considered itself \textit{sakoku}, or a "closed nation."\textsuperscript{103} That changed during the 1980s when Japan’s surging economy made it an attractive destination for immigration, and since then the number of foreigners in Japan has increased.\textsuperscript{104} While some Japanese have simply accommodated the influx of non-Japanese into Japan, there have been elements of Japanese society that stubbornly hold onto a belief that Japan should resist incorporating non-Japanese influences into the overall culture.\textsuperscript{105} This belief is called \textit{Nihonjinron}, or "theory of Japanese people," and it maintains that Japan is distinct – culturally, ethnically, and geographically – from the rest of humanity.\textsuperscript{106} \textit{Nihonjinron} continues to play a role in many instances of chauvinism and xenophobia directed towards foreigners inside of Japan.\textsuperscript{107} The \textit{Nihonjinron} goes far beyond racial and ethnic pride, and its effects have an impact on Japanese law and policy.\textsuperscript{108}

While discrimination in Japan may not result in violent acts of aggression towards ethnic minorities, its effects are still very real.\textsuperscript{109} Discrimination and racism typically take the forms of "housing discrimination, ejection from stores, employment discrimination, and exclusion from private establishments, public facilities, clubs, organizations, and financial services."\textsuperscript{110} Private clubs will regulate the number of foreigners allowed to join.\textsuperscript{111} It is not uncommon for shops to post "No Foreigners" signs (often in as many languages as possible to reach the widest audience possible) outside their windows, or for foreigners to have epithets hurled at them on the street.\textsuperscript{112}

Japan has dealt with discrimination largely through case law

\begin{thebibliography}{112}
\bibitem{101} \textit{Id.}
\bibitem{102} Webster, \textit{supra} note 23, at 212.
\bibitem{103} \textit{Id.} at 213.
\bibitem{104} \textit{Id.}
\bibitem{105} \textit{Id.}
\bibitem{106} \textit{Id.}
\bibitem{107} \textit{Id.} at 212-13.
\bibitem{108} \textit{Id.} at 214.
\bibitem{109} \textit{Id.} at 212.
\bibitem{110} \textit{Id.}
\bibitem{111} \textit{Id.} at 216.
\bibitem{112} \textit{Id.}
\end{thebibliography}
rather than tackling the issue directly through a statutory regime, meaning discrimination is fought case by case rather than through sweeping legislation. Generally speaking, cases deal with two different kinds of discrimination: permissible and impermissible. The standard for determining if a form of discrimination constitutes permissible or impermissible discrimination is if the discriminatory entity can articulate a basis for the discriminatory policy, a court will uphold the exclusion as legal.

The important case law surrounding the issue of what is permissible discrimination is relatively recent, stretching from the years 1999 to 2006. Notable cases include instances where a Caucasian man was barred entrance to a Japanese bathhouse despite his Japanese citizenship because he did not look Japanese; an Indian man was asked if his skin color was normal looking when applying for housing; and a black man was barred from entering a store because the storeowner told him he hated black people. The most important case in this line of cases is Bortz v. Suzuki, 1045 Hanrei Taimuzu 216 (Shizuoka D. Ct., Oct. 12, 1999). A Brazilian woman was asked to leave a store because she was Brazilian. While she did win an award of $12,500 in damages, the court did not find any law specifically banning this kind of discrimination. The case represents a nonbinding precedent against discrimination that other courts facing similar facts have chosen to follow in some instances and disregard in others.

This culture of discriminating against non-Japanese explains why the ethnic and racial identities of foreign parents involved in a child custody dispute could be yet another hurdle to reuniting with their child. Non-Japanese parents have to deal with the very real possibility that their own race or ethnicity might work against them.
in their efforts to reclaim their child.

IV. Current U.S. Measures in Effect Designed to Prevent International Abduction of Children

In the U.S. federal system, both local and national levels of government have tools at their disposal to prevent parents from taking their children out of the country against a court imposed custody order. At each level of government, however, there are serious weaknesses that expose severe shortcomings in preventing a parent from fleeing outside the jurisdiction of both the local court and the U.S. with their child.

A. U.S. Local and National Authorities' Power to Prevent International Abductions

Under 22 C.F.R § 51.60(e) (2012), local courts can ask the U.S. State Department to revoke a passport for a child who has been abducted, wrongfully removed, or retained in violation of a court order.123 Appropriate law enforcement agencies, local or federal, once notified of a potential child abduction, can enter the name of the adult suspected of the abduction into the State Department's passport name check system.124 The State Department, using this information, can then attempt to locate the adult, prevent future passport issuance to the individual, or attempt to force the individual's return to the United States.125 State courts have the authority to order a parent to surrender a minor child's passport to the court or the court's designee.126 Parents with legal rights of access to their child can request to be notified of the status of their child's passport.127 If a parent knows that their child is at risk of being taken out of the country, then these mechanisms do provide some safeguard against international abduction.

B. The Limitations of the Mechanisms for Preventing International Child Abduction in the U.S.

There are two major weaknesses to the systems in place in the

123. 22 C.F.R. § 51.60(e) (2012).
124. Fact Sheet, supra note 25.
125. Id.
126. Id.; 22 C.F.R. § 51.28(c)(5) (2012).
127. 22 C.F.R. § 51.28(c)(5).
U.S. for preventing international abduction. First, there are the issues of timing, knowledge, and compliance, and second there is the issue of enforceability of these powers in Japan and Japanese nationals. Both undercut the effectiveness of U.S. authorities to prevent international abductions and to recover children who have been abducted.

The first weaknesses include the issues of the timing of the abduction, the knowledge of the parent who stands to lose access to the child, and likelihood that the abductor parent will comply with the authorities. The powers of both the local authority and the U.S. State Department are most effective before the abducting parent has left the jurisdiction. Ordering the surrender of a child's passport or requesting to know the status of a child's passport is only worthwhile to a concerned parent prior to the exit of their child from the jurisdiction. After the child has been abducted to Japan, they serve at worst as an empty gesture. This issue bleeds into the related issue of knowledge. It is important to stress that in order for concerned parents to make use of these measures, the parents know that they exist. Of course, the courts and authorities have to also know or suspect that a parent intends to flee to Japan before they can execute these procedures. If the parent does not know or suspect that the abducting parent will abscond to Japan, then it is highly unlikely these preventative measures would be utilized. It also seems unlikely that a parent who is willing to abduct a child in defiance of a court order and transport said child to a foreign country would be likely to comply with a court order to surrender the child at issue's passport.

The fact that U.S. courts have little tools to enforce family law judgments against Japanese nationals severely weakens their effectiveness. Parents who share a child with someone who is a Japanese national face the real possibility that the abducting parent is beyond the scope of U.S. law. Under the current extradition treaty between the U.S. and Japan, neither country is compelled to extradite their own nationals.128 Rather, the treaty empowers each country to use its discretion when determining whether or not to extradite a national.129 Given both the tendency for Japanese family courts to favor maintaining a Japanese identity for Japanese

129. Id.
children and their reticence in disrupting what they view as a stable family environment even if that environment was established after a transgression against an already established agreement, it seems unlikely that any of the measures previously listed could really result in a favorable outcome for a wronged parent.

V. Recommendations for Change

For any meaningful changes to occur, ideally two things must occur. Japan must reform its domestic family law to align itself with international norms by allowing shared custody agreements between parents and must ratify the Convention so as to provide a formal mechanism for the return of abducted children to their place of habitual residence.

A. A Sign of Potential Change

In April of 2012, the Osaka High Court awarded a Nicaraguan man living in the United States custody of his daughter following his divorce of the girl’s Japanese mother who had abducted the girl to Osaka. The court, overturning a decision by the Itami branch of the Kobe Family Court, found that the girl had become accustomed to living in the United States with her father and his family. This decision represents a potential shift in judicial attitudes that would bring Japan into step with international norms, but it remains to be seen if this decision heralds the beginning of a new era for Japanese family law or if it is only an aberration.

B. The U.S. Should Apply Pressure to Japan to Ratify the Convention

The U.S. occupies a unique position in this context. Japan is one the U.S.’s most important economic trading partners, and, outside of North America, Japan is the United States’ second-largest export market and second-largest source of imports. Japanese firms are

130. Bryant, supra note 48, at 18.
131. Jones, supra note 19, at 169.
133. Id.
the United States' second-largest source of foreign direct investment.\textsuperscript{135} The U.S. and Japan also enjoy a relationship that transcends a mere economic relationship. Japan and the U.S. have a long-standing military alliance that includes the stationing of approximately 53,000 U.S. troops in Japan and providing Japan with a nuclear umbrella in the case of an attack on Japan by one of its neighbors.\textsuperscript{136}

The U.S. should capitalize on the close relationship it has with Japan. It is in a position to urge Japan to ratify the Convention, and use its various economic and military ties as bargaining power. If the U.S. committed itself to achieving both Japan's ratification of the Convention and a subsequent or simultaneous change in Japanese family law, it seems more likely than not Japan, based on its relationship with the U.S., would rationally seek to compromise with its ally. In 2009, the U.S. House of Representatives enacted a resolution to strengthen domestic mechanisms to resolve international child abductions.\textsuperscript{137} The resolution noted that as of 2009 there were 101 cases of child abduction involving Japan.\textsuperscript{138} It remains to be seen what other steps the U.S. government will take, if any, to apply pressure to Japan.

VI. Conclusion

The nightmare scenario of having a child abducted, never to be seen again, only worsens when the color of law lets such an event happen. For American parents who struggle to enforce custody arrangements in Japan against parents who have abducted their children, that nightmare can drag on to the point of demoralization. The deck is stacked against such litigants in a multitude of ways. Japan's non-signatory status for the Hague Convention on the Civil Aspects of International Child Abduction turns the country into a safe haven for Japanese nationals seeking to evade foreign custody agreements. Japan's family law regime disfavors joint custody, favors maintaining Japanese identity, and can produce an atmosphere of contention between litigants. Not insignificantly, a culture of discrimination against foreigners can influence the

\begin{itemize}
\item \textsuperscript{135} Id.
\item \textsuperscript{136} Id.
\item \textsuperscript{137} H.R. Res. 3240, 111th Cong. (2009) (enacted).
\item \textsuperscript{138} Id.
\end{itemize}
outcome of a child custody dispute between a Japanese parent and a foreign parent. To combat this, Japan should incorporate meaningful shared custody arrangements into its family law and sign onto the Convention. The U.S. is in a position to exert much influence to see that Japan does this based on the two countries' close economic and military ties. Until Japan's family law systematically changes, the result, unfortunately, will continue to be a nightmare for parents who have had their children abducted and taken to Japan.