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FOR WOMEN'S CAREER AND CHILDREN'S RIGHTS

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NGO Joint Submission for UPR 42nd Session

Japan

Parent-Child severance caused by judicial system in Japan

ANNEX 2

Social Science Review, No. 164, 2021.6

<<International Society and Japan>>

International Trends in Human Rights Guarantees and Japan

- Especially on "The Hague Convention on Removal of Child"

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Introduction

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Introduction

The modernization of Japan, for the time being, can be said to have started after the so-called Meiji Restoration. Guarantees of human rights in the modern sense began with the Constitution of the Empire of Japan (Meiji Constitution) of 1889 as actual law.¹ The enactment of the Meiji Constitution was directly caused by the elimination of so-called unequal treaties and other modernization demands from Western countries, in other words, external efforts. From a world historical perspective, however, it can be placed within the development of modern constitutionalism. The guarantees of the rights for the subjects in the Meiji Constitution can be described as the first step toward guarantees of modern human rights in Japan in response to international trends. The enactment of the Japanese Constitution in 1946 was also directly triggered by the acceptance of the Potsdam Declaration, which was an external initiative. As a result, the human rights guarantees introduced into Japan are in line with the 20th century trend of human rights guarantees as guaranteeing social rights in addition to the modern classical human rights guarantees.

This development of human rights guarantees in Japan in response to international trends in human rights guarantees has continued since the enactment of the Constitution of Japan. These include, for example, the enactment of the Convention on the Elimination of All Forms of Discrimination against Women (Convention on the Elimination of All Forms of Discrimination against Women) and the Equal Employment Opportunity Law (Law Concerning the Promotion of the Welfare of Women Workers by Securing Equal Opportunity and Treatment between Men and Women in Employment - the so-called Old Equal Opportunity Law),² and the Convention on the Rights of Persons with Disabilities (Convention on the Rights of Persons with Disabilities) and the enactment of the Law on the Elimination of All Forms of Discrimination against Persons with Disabilities (Law on the

¹ The rights for the subjects in the Meiji Constitution were under a constitutional monarchy (external constitutionalism), which is different from the fundamental guarantees what it should be of human rights.

² As described later, the Convention on the Elimination of All Forms of Discrimination against Women calls for comprehensive elimination of discrimination against women, not limited to the field of employment.

Elimination of All Forms of Discrimination on the Basis of Disability).³ The enactment of these domestic laws in response to the treaties has led to - albeit gradual - progress in human rights guarantees. In addition, although no legislation was enacted upon ratification of the Convention on the Rights of the Child (Convention on the Rights of the Child), thereafter, upon the recommendation of the UN Committee on the Rights of the Child, the "Act on Punishment of Activities Relating to Child Prostitution and Child Pornography, and the Protection of Children" (currently the "Act on Regulation and Punishment of Acts Relating to Child Prostitution and Child Pornography, and the Protection of Children") was enacted.

However, despite these international trends in human rights guarantees, some of Japan's human rights guarantees do not seem to correspond to them.⁴

The following is an overview of the development of domestic human rights guarantees triggered by treaties, using the Convention on the Elimination of All Forms of Discrimination against Women as an example. Next, as a recent example of Japan's accession to the Convention in response to international trends, the Hague Convention on removal of child ("Hague Convention on the Civil Aspects of International Child Abduction") will be discussed.⁵ This Convention is noteworthy in that the law ("Act for Implementation of the Convention on the Civil Aspects of International Child Abduction") enacted upon ratification of the Convention has recently been amended to more effectively implement the Convention,⁶ though, the reason for addressing the Hague Convention in this paper is more substantive. That is, while the Convention requires in principle that a child who has been removed away from his or her parents be returned to the place of origin, on the contrary in Japan, it is a de facto principle not to return a child, as it has been described as

³ The enactment of these laws does not mean that Japan's level of human rights guarantees in these areas has been raised to the point where it can be said to be adequate from an international perspective. For example, it must be said that many issues remain to be solved in the area of discrimination against women. However, there is no doubt that these laws have made progress - might be slight - in guarantees human rights in Japan. In addition, "In Japan, when ratifying international human rights treaties, there is the policy to examine the consistency between the content of the treaty and domestic laws, amend contradictory domestic laws, and take necessary legislative measures for the implementation of the treaty before concluding the treaty." (Watanabe, Noriyuki (ed.))[Contemporary Family Law Lectures, Volume 5: Internationalization and Family], Nippon Hyoronsha (2021), p. 34 (Otani, Mikiko)) For this reason, it can be said that legislation made upon ratification of a treaty can be seen as an indication of an improvement in human rights guarantees.

⁴ For example, Japan is not a party to the Convention for the Abolition of the Death Penalty (the Second Optional Protocol to the International Covenant on Civil and Political Rights, which aims to abolish the death penalty), in some individual fields, Japan is not even a party to international human rights treaties to begin with.

⁵ Hereinafter simply referred to as "the Hague Convention." Although the name of the Convention uses the word "abduction," in practice, as it is not uncommon for the other parent to take a child away from home while another parent is absent, "removal of child" will be used primarily in this paper.

⁶ In May 2019, "Partially Amending the Civil Execution Act and the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction" was approved, which entered into force in April 2020.

"winning by removal", Japan's current situation is the exact opposite of what is required by the treaty.⁷ In other words, from the perspective of the Hague Convention, rather than insufficient human rights guarantees, it could be said that the situation of human rights violations is left unchecked. We will discuss this issue after confirming the contents of the Hague Convention and looking at the situation and issues in Japan.

1. Development of Domestic Human Rights Guarantees Triggered by Conventions

This section provides an overview of the development of domestic human rights guarantees triggered by treaties, as an example, taking the Convention on the Elimination of All Forms of Discrimination against Women.

Before that, however, a brief review of the flow of human rights guarantees in the United Nations is reviewed.

The United Nations first adopted the Universal Declaration of Human Rights in 1948. Then, in 1966, it adopted "International Covenant on Economic, Social and Cultural Rights"(ICESCR) and "International Covenant on Civil and Political Rights"(ICCPR).⁸ After establishing these comprehensive human rights treaties, the UN began to establish human rights treaties in individual fields to enhance human rights guarantees in priority areas. Examples include the Convention on the Elimination of All Forms of Racial Discrimination, the Convention on the Elimination of All Forms of Discrimination against Women, the Convention on the Abolition of the Death Penalty, the Convention against Torture, the Convention on the Rights of the Child, the Convention on the Rights of the Disabled, and the Hague Convention on Child Abduction. Thus, the flow of human rights guarantees in the United Nations, with the aim of realizing more effective human rights guarantees, has shifted from making comprehensive human rights declarations to establishing individual human rights treaties for areas where priority should be given to human rights guarantees.

This development, if brings to the level of Japanese domestic law, is to provide more concrete and effective guarantees of the comprehensive human rights guarantees set forth in the Constitution by establishing laws that embody human rights in individual fields.

(1) Ratification of the Convention on the Elimination of All Forms of Discrimination against Women and enactment of the Equal Employment Opportunity Law

The UN unanimously adopted the "Declaration on the Elimination of Discrimination against Women" at its 22nd session in 1967. The Convention on the Elimination of All Forms of Discrimination against Women was adopted in 1979, signed by

⁷ Of course, international removal of child is now handled in accordance with the Hague Convention. However, as we will see later, the principle of the Hague Convention is reversed with regard to removal of child within Japan. In addition, there may be a sense of discomfort in placing the Hague Convention, which provides for procedures under private international law, in the context of human rights guarantees. However, as we will see later, the Hague Convention is nowadays understood as a treaty for the protection of the rights of the child in conjunction with the Convention on the Rights of the Child.

⁸ Japan ratified this Convention in 1979, and it entered into force the same year.

⁹ This treaty requires ratification in addition to signature (Article 25). Japan finally ratified the treaty in 1985, five years after signing.

51 countries including Japan in 1980,⁹ and entered into force the following year in 1981.¹⁰

In its preamble, the Convention on the Elimination of All Forms of Discrimination against Women notes that despite the resolutions, declarations, and recommendations adopted by the UN and its specialized agencies to promote equal rights for men and women, there is still widespread discrimination against women, and that the traditional roles of men in society and in the family should be changed to include the roles of women, is necessary for the achievement of full equality between men and women. Then, in Article 2, as an obligation of States Parties to "condemn discrimination against women in all its forms, agree to pursue by all appropriate means and without delay a policy of eliminating discrimination against women" establishes specific measures, such as the following. Such as, "(a) To embody the principle of the equality of men and women in their national constitutions or other appropriate legislation if not yet incorporated therein and to ensure, through law and other appropriate means, the practical realization of this principle," "(b) To adopt appropriate legislative and other measures, including sanctions where appropriate, prohibiting all discrimination against women," "(e) To take all appropriate measures to eliminate discrimination against women by any person, organization or enterprise," "(f) To take all appropriate measures, including legislation, to modify or abolish existing laws, regulations, customs and practices which constitute discrimination against women," etc. Thus, the Convention on the Elimination of All Forms of Discrimination against Women requires States Parties to eliminate "all forms of discrimination" against women.

And taking the field of employment where discrimination against women has become an issue in Japan during this period as an example, Article 11 obliges States Parties to "(b) The right to the same employment opportunities, including the application of the same criteria for selection in matters of employment," "(c) The right to free choice of profession and employment, the right to promotion, job security and all benefits and conditions of service and the right to receive vocational training and retraining, including apprenticeships, advanced vocational training and recurrent training."

In response to these treaty obligations, Japan enacted the so-called former Equal Opportunity Law in 1985, based on the previous "Working Women's Welfare Law." This law is one of the representative examples of how international trends in human rights

⁹ This treaty requires ratification in addition to signature (Article 25). Japan finally ratified the treaty in 1985, five years after signing.

¹⁰ In March of this year, the Supreme Court of Japan ruled in the so-called Nissan Motor case, holding that the gender-based retirement age system in private companies "should be interpreted as invalid under Article 90 of the Civil Code (see Article 14, paragraph 1 of the Constitution and Article 1-2 of the Civil Code) as establishing unreasonable discrimination based solely on gender" (Supreme Court Decision March 24, 1981). (Minshu, Vol.35, No.2, p.300, February 28, 2008). The case originated from a retirement order issued by the company in question in 1969, two years after the UN Declaration on the Elimination of Discrimination against Women, on the grounds of gender-based retirement age. This trial was almost simultaneous with the progress toward the realization of the Convention on the Elimination of All Forms of Discrimination against Women at the UN. From the perspective of the relationship between the international trend of human rights guarantees and Japan's human rights guarantees, the Supreme Court's decision to invalidate the order can be described as symbolic. However, there is no reference to the Convention on the Elimination of All Forms of Discrimination against Women in the Supreme Court's decision.

guarantees have pushed forward Japan's human rights guarantees, as described as "the international pressure to ratify the Convention on the Elimination of All Forms of Discrimination against Women was the factor that contributed most to the enactment of the Equal Employment Opportunity Law."¹¹ However, as is well known, the former Equal Employment Opportunity Law was by no means a sufficient response to the Convention on the Elimination of All Forms of Discrimination against Women. For example, "the law allows the treatment of 'women only' as long as it does not violate the welfare of women., 'part-time women only' and 'general employment women only' in course-based employment," and "Regulation of discrimination at the critical employment stages of recruitment, hiring, placement, and promotion "was a duty of effort on the part of the employer, and conciliation required the employer's consent."¹² This is clearly not sufficient in light of Article 11 of the Convention on the Elimination of All Forms of Discrimination against Women, as discussed earlier. For this reason, the former Equal Employment Opportunity Law was variously criticized. However, it has been pointed out that the enactment of the former Equal Employment Opportunity Law has made progress toward eliminating discrimination against women to a certain extent. For example, "Since the implementation of the Equal Employment Opportunity Law, the number of female managers has increased, though not as much as expected, women have entered new occupations traditionally reserved for men."¹³

(2) Revision of the Equal Employment Opportunity Law

The former Equal Opportunity Law was subsequently amended in 1997 to prohibit discrimination in all aspects of employment, and was renamed the "Act on Securing, Etc. of Equal Opportunity and Treatment between Men and Women in Employment" (New Equal Opportunity Law). The duty-of-effort provisions regarding recruitment, hiring, placement, and promotion became prohibitive provisions (Articles 5 and 6), and, certain progress has been made, such as the introduction of a duty of care on the part of employers to prevent so-called sexual harassment and state assistance for positive action by companies. However, problems remained.¹⁴

In 2006, the new Equal Employment Opportunity Law was further amended, leading to the current law. The current law prohibits discrimination not only against women as it did before but also against men,¹⁵ and to a certain extent also prohibits indirect

¹¹ Mutsuko Asakura, "Labor and Gender Jurisprudence" Yuhikaku (2000), p.182. Asakura cites two other factors: "the increase in the number of female workers since the period of rapid economic growth and the accompanying heightened awareness of gender equality", and "the accumulation of labor precedents concerning discrimination against women raised during the same period, and the growing recognition that the inadequacy of the legal system stands as a barrier despite this" (p.181).

¹² Asakura, supra note (11), p.182.

¹³ Hiroko Hayashi, "Gender Equal Employment Opportunity Law: 10 Years and Future Issues," No.1079 (1995), p.4 and following (p.7). However, Hayashi also points out some problems, such as the fact that, for example, employment management by gender course may have advanced and become legalized.

¹⁴ Asakura, supra note (11), p.130 and following.

¹⁵ For example, Article 5 states "employers shall provide equal opportunities for all persons regardless of sex."

discrimination (Article 7). Some views have evaluated this current that "The principle of the laws has become, from 'a gradual prohibition of discrimination against women.'(The former Equal Employment Opportunity Law), to 'prohibits discrimination against women.'(The revised Equal Employment Opportunity Law), finally 'prohibits discrimination against both men and women.'(The current Equal Opportunity Law). In this regard, since the Convention on the Elimination of All Forms of Discrimination against Women prohibits all forms of discrimination against women, in terms of 'against women' and 'against both men and women', the current Equal Employment Opportunity Law, which prohibits discrimination against both men and women, has become, in its 21st year, an equal law that exceeds 'the Convention on the Elimination of All Forms of Discrimination against Women.'"¹⁶

Thus, at least in the field of employment, it can be said that some progress has been made in human rights guarantees in Japan by establishing and revising the Equal Employment Opportunity Law in response to the international trend toward the elimination of discrimination against women.¹⁷ However, it is also true that many challenges remain, as pointed out, for example, in the "Concluding observations on the combined seventh and eighth periodic reports of Japan"¹⁸ of March 7, 2016 by the UN Committee on the Elimination of Discrimination against Women. Further progress in human rights guarantees is required to address these challenges. Nevertheless, it can be said that improvements have been made.

2. Overview of the Hague Convention

Next, we will examine the Hague Convention as an example of a country that has ratified a treaty in response to an international trend, but whose progress in human rights guarantees in Japan is questionable.

(1) Convention's Establishment and Japan's Ratification

In the 1970s, international migration of people and international marriages

¹⁶ Mieko Nagata, "Gender Equal Employment Opportunity Law: History, Current Situation and Issues after Amendment," Heian Jogakuin University Research Annual Report, vol. 9 (2009), p.43 and following (p.49). However, Nagata also points out that there are still problems regarding the actual situation.

¹⁷ Analyzing the impact of the Convention on the Elimination of All Forms of Discrimination against Women in the field of family law, Hayashi points out that the recommendations of the Committee on the Elimination of Discrimination against Women "serve as a catalyst to promote change" (Yoko Hayashi, "The Convention on the Elimination of All Forms of Discrimination against Women and Japanese Family Law," in Shuhei Ninomiya, Editor in Chief, Modern Family Law Lecture Vol.5: Internationalization and Family, Nippon Hyoronsha, Inc. (2021), p.1 and below (p.27)). Although this paper sees its influence as more than a "catalyst," the basic idea is common to Hayashi.

¹⁸ WEB page of the Gender Equality Bureau, Cabinet Office (https://www.gender.go.jp/kaigi/danjo_kaigi/siryō/pdf/ka49-2-2.pdf) There, when it comes to employment, issues such as the widening wage gap between men and women, the continued concentration of women in part-time work, harassment related to pregnancy and childbirth in the workplace, and sexual harassment are pointed out. English: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CEDAW%2FC%2FJPN%2FCO%2F7-8).

increased, and with it came the recognition of the need to resolve the issue of international jurisdiction over problems such as a removal of child by one parent after the breakdown of a marriage. In order to establish international rules on such issues, the Hague Conference on Private International Law, which aims to unify private international law, adopted the Convention on the Civil Aspects of International Child Abduction on October 25, 1980. The Convention entered into force on December 1, 1983. At the time of the Convention's inception, the signatories were "limited to Western Europe and the countries of the same cultural sphere, such as North America and Australia."¹⁹ Later, it spread to Latin American and Eastern European countries, including countries that are not members of the Hague Conference on Private International Law, as well as countries in Asia and Africa. As of October 2020, 101 countries have signed the Convention.²⁰

The Hague Convention was adopted at about the same time as the Convention on the Elimination of All Forms of Discrimination against Women discussed earlier, but Japan's ratification was much later than that of the Convention. This was due to strong domestic opposition and cautious discussions.²¹ However, for example, the 2004 Concluding observations of the Committee on the Rights of the Child, in response to Japan's Second Report of Japan to the UN Committee on the Rights of the Child, noted that "41. The Committee is concerned that there are insufficient safeguards to protect children from abduction." and "42. The Committee recommends that the State party ratify and implement the Hague Convention on the Civil Aspects of International Child Abduction of 1980."²² In addition, in the first Japanese government review and outcome document by the UN Human Rights Committee in May 2008, Canada and the Netherlands recommended the conclusion of the Hague Convention.²³ And Japan has been a non-signatory to the Hague Convention for a long time, and criticized by Western countries for "condoning removal of children," and strongly urged to accede to the Convention, which became a diplomatic

¹⁹ Mikiko Otani, "Toward the Implementation of the 'Convention on the Civil Aspects of International Child Abduction' (Hague Convention) - From the Perspective of Legal Assistance and Access to Justice," General Legal Assistance Review No.4 (2014), p.51 and below (p.53).

²⁰ Ministry of Foreign Affairs of Japan website
(<https://www.mofa.go.jp/mofaj/files/000023749.pdf>)
English: <https://www.mofa.go.jp/files/000028800.pdf>

²¹ Otani, supra note (19), p.56; Yuko Nishitani, "Issues and Prospects Regarding the Implementation of the Hague Convention on Child Abduction," Ninomiya, supra note (17), p.57 and following (p.58).

²² Ministry of Foreign Affairs of Japan website
(https://www.mofa.go.jp/mofaj/gaiko/jido/0402/pdfs/0402_j.pdf).
English: https://tbinternet.ohchr.org/_layouts/15/treatybodyexternal/Download.aspx?symbolno=CRC%2FC%2F15%2FAdd.231

²³ Ministry of Foreign Affairs of Japan website
(https://www.mofa.go.jp/mofaj/gaiko/jinken_r/pdfs/upr_sk0805j.pdf). Although the Hague Convention was established out of a procedural interest in private law, the essence of the issue is a human rights issue, as indicated by the fact that recommendations were made by the Committee on the Rights of the Child and the United Nations Commission on Human Rights.
English: https://www.mofa.go.jp/mofaj/gaiko/jinken_r/pdfs/upr_sk0805e.pdf

issue.²⁴ "In particular, international pressure intensified in 2010, when the United States and other countries, in addition to Canada, which has long addressed this issue [when a child is removed from a foreign country, especially a Western country, to Japan, not only is the child not returned, but even the whereabouts of the child are unknown - author], issued a joint statement calling on the Japanese government to conclude the Hague Convention."²⁵ In response to these international trends, the Hague Convention was approved by the Diet in May 2013, ratified the following year in 2014, and entered into force on April 1. A law to implement the Convention, the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction ("the Convention Implementation Law"), was also enacted in June 2013, prior to ratification.²⁶

(2) Contents of the Hague Convention

The Hague Convention consists of 45 articles and sets forth procedures in considerable detail, but here we will review the contents to the extent necessary for the interest of this paper.²⁷

Article 1 of the Hague Convention establishes two objectives. The first is to secure the prompt return of children wrongfully removed to or retained, and the second is to ensure that rights of custody and of access under the law of one Contracting State are effectively respected in the other Contracting States, specifically, to ensure cross-border visitation. In this regard, the Convention provides for the return of the child in Chapter III and the right to contact in Chapter IV.

Removal of a child²⁸ is to be considered wrongful where it is in breach of rights of custody attributed to a person under the law of the State in which the child was habitually

²⁴ Kyoko Zenzumi, "Implementation Law on Cross-border Removal of Children: Japan and Sweden," Bulletin of the Faculty of Sociology, Otomon Gakuin University, No.9 (2015), p.117 and below (p.119). In addition, the Ministry of Foreign Affairs of Japan's website, "Overview of the Hague Convention and Domestic Implementation Laws" (https://www.mofa.go.jp/mofaj/fp/hr_ha/page22-000843.html) states that "Problems have also arisen where Japanese nationals living abroad have been unable to return temporarily to Japan with their children because Japan has not yet signed the Hague Convention." English: https://www.mofa.go.jp/fp/hr_ha/page22e_000250.html

²⁵ Otani, supra note (19), p.56.

²⁶ For the background of the enactment, for example, Mikiichiro Dozono and Tatsufumi Nishioka, "Outline of the Act for Implementation of the Convention on the Civil Aspects of International Child Abduction (so-called Hague Convention Implementation Act)," Houhou no Hiroba, September 2013, p.54 and following.

²⁷ The Japanese translation of the Hague Convention refers the Ministry of Foreign Affairs translation (https://www.mofa.go.jp/mofaj/gaiko/treaty/pdfs/treaty180_11.pdf). Also for an overview of the contents, Otani, supra note (19), and "Chapter 1: General Introduction" (Nishitani) in "Theory and Practice of the Hague Convention" edited by Mikiko Otani and Yuko Nishitani, published by Law Bunka Sha (2021).

English: <https://www.hcch.net/en/instruments/conventions/full-text/?cid=24>

²⁸ In what follows, we will focus on removal of child, in accordance with the interest of this paper. Note that removal, under the Hague Convention, is the removal of a child from the country of residence to a foreign country, while detention is the holding a child to a foreign country with a time limit and keeping the child there after the time limit has passed.

resident²⁹ immediately before the removal (Article 3 of the Convention). Removal in violation of the right to custody is, for example, the removal of a child by one parent without any consent of the other parent.³⁰

When an application is filed for a child who has been unlawfully removed in such a way that his or her custody rights have been violated, if there are grounds for the application, the habitual residence state and the State to which the child was allegedly removed shall expedite the procedures for the return of the child (Article 8 et seq. of the Convention). The State to which the child was removed is obliged to return the child to the State of habitual residence, with certain exceptions (Article 12 et seq. of the Convention). In exceptional cases, the child may not be returned if (1) more than one year has elapsed at the date of the commencement of the proceedings from the date of the wrongful removal, and the child is now settled in its new environment, (2) custody was not actually exercised at the time of removal, (3) a consent was given or subsequently acquiesced in the removal, (4) there is a grave risk that returning would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation, (5) the child objects to being returned and has attained an age and degree of maturity at which it is appropriate to take account of its views, (6) the return of the child is not permitted under the basic principles for the protection of human rights and fundamental freedoms in the State of the child's habitual residence. Unless one of these exceptions applies, the child shall be returned to the State of habitual residence.

The reason why the Hague Convention thus requires that, in principle, the child shall be returned (restoration to the original state³¹) for removal of child is based on the concept of "It is desirable that the illegal removal of child from the country where the child has lived before (country of habitual residence) to another country has a harmful effect on the child (see the preamble of the Convention) and that disputes over the custody of the child should be settled in the country of habitual residence."³² According to Otani, the Secretariat of the Hague Conference on Private International Law explained that "It is based on the premise that returning the child to the State of habitual residence upholds the child's right to interact with both parents (see Article 9(3) of the Convention on the Rights of the Child), supports continuity in the child's life (see Article 8 of the Convention), and promotes the interests of the child."³³ In other words, it can be said that the position of the Hague Convention is that, since removal of child is basically an infringement of the child's

²⁹ For more on this meaning, for example, Watanabe Satoshi., "Habitual residence and Its Determination in the Hague Child Abduction Convention and its Implementation Law," *Osaka University Law Review*, vol.68, No.3 (2018), p.705 and following. This paper will not go into a detailed interpretation of the Convention.

³⁰ Ministry of Foreign Affairs website (<https://www.mofa.go.jp/mofaj/files/000390297.pdf>)

³¹ Explanatory Report by Elisa Pérez Vera (prepared in 1981, translation supervised by Shinichiro Hayakawa), Ministry of Foreign Affairs website (<https://www.mofa.go.jp/mofaj/files/000450185.pdf>), p.6. It should be noted that in removal of child, it is considered "status quo" to return the child to the place where he or she was before being removed.

English:<https://www.hcch.net/en/publications-and-studies/details4/?pid=2779>

³² Douzono and Nishioka, *supra* note (26), p.55. See also Yoshizumi, *supra* note (24), p.119.

³³ Otani and Nishioka, *supra* note (27), "Chapter 5: Hague Convention Practice and International Human Rights Law" (Otani) p.119 and follows (p.122).

interests, the principle is to restore the child to the original state and return the child.

In some countries, this concept of the interests of the child appears to have been adopted for domestic removal of child as well. For example, in Germany, Article 235 of the Criminal Code, "Separation of a minor," makes the act of removal of child from one parent by the other parent also punishable. Furthermore, the requirement imposing a limitation on the method of removal, "by means of violence, by threats of serious harm, or by trickery," is broadly interpreted as "trickery," thereby extending the scope of punishment.³⁴ Thus, "even a case in which one parent removes a child from his or her home without telling the other parent and makes the child disappear can be punished."³⁵ It has also been pointed out that "according to the legislation of many Western countries, any type of abduction of a child without regard to parental custody constitutes kidnapping under the Criminal Code."³⁶ In other words, the Hague Convention's concept of "restoration of the original state" can be seen, with reference to these examples, to be common not only to international removal of child but also to domestic removal, when a child is suddenly removed from his or her previous environment.

(3) Implementation of the Hague Convention in Japan

In Japan, the Hague Convention entered into force on April 1, 2014, and the Convention Implementation Law entered into force on the same day. This section provides an overview of the implementation status since then.³⁷

A parent or other person from whom a child has been removed may apply to the Japanese central authority (the Minister of Foreign Affairs) for assistance in returning the child or having contact (visitation) with the child, in accordance with the Convention Implementation Law (Articles 4 - 25). According to the Ministry of Foreign Affairs,³⁸ from FY2014 to FY2020, a total of 150 cases of return assistance applications were filed for children located in Japan, of which 131 cases were approved and a decision was made to provide assistance, or approximately 87% (120 and 101 cases for visitations, respectively). There are 98 cases in which it has been concluded that the return of the child has been finalized or realized, or that the child's non-return has been finalized, of which 56 cases

³⁴ Shinya Fukamachi, "Argumentative Situation Regarding the Separation of Minors in German Criminal Law (vol. 1), (vol. 2)," in Houritsu Jihou Vol.89, No.11, p.128, and Vol.89, No.12, p.110.

³⁵ Shinya Fukamachi, "Serialization: Family and Criminal Law: Is the Family a Hotbed of Crime? No.8 When Conscience Fights Each Other Over Children, Part I," ShosaiNoMado, July 2018, p.15 and following (p.19). However, according to Fukamachi, in Germany today, what is particularly problematic are cases in which the children are removed out of the country. Also, in Switzerland, it is the same as in Germany. However, in Austria, the crime of kidnapping child by whom has parental authority is basically denied.

³⁶ Taichi Kajimura, "The Hague Convention and Removal of Child," Law Seminar, May 2019, p.36.

³⁷ For the following description, see Shinichiro Hayakawa, "The Operation of the Hague Convention and Future Issues," Jurist, September 2017, p.84 and following. However, data that can be updated are the most recent available.

³⁸ Ministry of Foreign Affairs of Japan website (<https://www.mofa.go.jp/mofaj/files/100012143.pdf>)
English: <https://www.mofa.go.jp/files/100012160.pdf>

were return and 42 cases were non-return. Of these return cases, 16 cases of settlement through talks (including ADR etc.), 16 cases of conciliation (in-court mediation), 2 cases of amicable settlement, and 22 cases of court order. And there are 3 cases in which the court order is said to be unenforceable.

As for applications concerning children residing abroad, there were 120 cases of restitution assistance, of which 101 cases (84%) were approved. And 75 cases were concluded, of which 47 cases were return and 28 cases were non-return. Of these return cases, 26 cases of settlement through talks, while the rest were through court proceedings.

We would like to note here that the Ministry of Foreign Affairs' report clearly states that 3 cases concerning children located in Japan were unenforceable. Because, this is the most important objective of the Hague Convention is to achieve the return of the child. "When the court issues a return order and it becomes final, it is the natural obligation of a citizen of a country ruled by law that the TP [parent who took the child - the author] should return the child in accordance with that order. However, in Japan today [2017 - author], that natural thing cannot be realized. In the case of enforcement that TP does not comply with the order, the alternative enforcement (liberation enforcement) used in the final phase is considered unenforceable if TP stubbornly resists, and restitution cannot be realized in the end," and furthermore, "While the TP resists and the restitution order cannot be enforced for a long period of time, a situation has developed in which the TP has been resisting and the restitution order has not been enforced for a long period of time, and TP has filed a petition for modification of the final decision under Article 117 of the Convention Implementation Law (a petition seeking modification of the final judgment ordering restitution on the grounds that the circumstances have changed since then). Except there is extremely serious changes in circumstances, if the court were to grant such a petition and issue a decision that restitution is not required in such a case, the logic of power that if TP persists and buys time for the restitution order, the court itself will follow its resistance will dominate this society, and the rule of law will become a pipe dream and the authority of the court will fall to the ground."³⁹ Thus, for example, the United States had already noted in the 2016 edition of the State Department's "Annual Report on International Child Abduction" that Japan was in violation of its obligations under the Hague Convention. And in the 2018 edition, the U.S. certified Japan as in non-compliance of the Hague Convention based on the lack of effective means to enforce orders when the TP refuses to comply with a court order of return.⁴⁰

³⁹ Hayakawa, supra note (37), p.89. Note that the issues raised are likely based on the legal situation in 2017 when the paper was written. However, it is believed that the issues are still relevant today.

⁴⁰ Yoshiaki Omura, "Research Note: U.S. Department of State, 'Annual Report on International Child Abduction' and Japan," Chuo Gakuin University Law Review, vol.33, No.2 (2020), p.61 and follows. The fact that Japan was identified as a country in non-compliance was also covered by some of the Japanese media. For example, the June 27, 2018 morning edition of the Asahi Newspaper (Tokyo edition) referred to the U.S. State Department Annual Report in an article headlined "Policy to Review Rules on Child Extradition, Making Presence of Parent who lives with Unnecessary." Also, in the September 17, 2018 issue of the President's E-edition, "Japan is the only country where 'removal of child' by a parent is legal" (<https://president.jp/articles/-/26291?page=1>) introduced the annual report in the same way.

Therefore, in response, in 2019, "Revision of the Civil Enforcement Law and other laws with the intention of overcoming noncompliant countries"⁴¹ was amended. According to the revised the Convention Implementation Law, an exception was made to the previously taken pre-condition of indirect compulsion, which allows for immediate alternative enforcement when two weeks have passed after the decision of indirect compulsion, or when the return of the child is unlikely through indirect compulsion, or when it is necessary to prevent imminent danger to the child (Article 136). In addition, the requirement of simultaneous presence of the child and the TP was abolished when enforcing the return of the child, and the parent seeking the return can now enforce by appearing at the scene of execution (Article 175, paragraphs 5 and 6 of the Civil Execution Law apply mutatis mutandis to Article 140, paragraph 1). Note that Japan was not identified as a country in non-compliance in the U.S. Department of State's 2019 Annual Report.⁴²

Then, how should we evaluate Japan's implementation of the Hague Convention?

For example, on the results from FY2014 to FY2016, Hayakawa noted that "it can be pointed out that the Convention and its implementing legislation have been used quite actively, and that Japan has been steadily building up a track record with reasonable results in terms of child return and visitation,"⁴³ while pointing out the aforementioned problems, the report also states that "reasonable results have been achieved."⁴⁴ Also Nishitani evaluated, "In the six years that have passed since Japan accepted the Child Abduction Convention, a substantial body of practice has been established. As far as can tell, the operation of the Child Abduction Convention in Japan has been carried out sincerely and properly, and it can be said that it is comparable to that of Western countries."⁴⁵

Thus, with regard to the international removal of a child between Japan and a foreign country, the conclusion of the Hague Convention is making it a principle to return the child to the place where he or she had previously been habitually residing. This means that the rights of the child, which the Hague Convention seeks to protect, are now being guaranteed in Japan in the case of international removal of child, in other words, human rights are being guaranteed in line with international trends. However, from an international perspective, such a view is open to question. For example, on July 8, 2020, the European Parliament passed a resolution in plenary session entitled "International and domestic

⁴¹ Omura, supra note (40), p.61. The revised law is the "Act for Partial Revision of the Civil Execution Law and the Law Concerning the Implementation of the Convention on the Civil Aspects of International Child Abduction."

⁴² Omura, supra note (40), p.66. According to Omura, this is considered an "effort award," so to speak, for the submission of the bill amending the Convention Implementation Law to the Diet during 2018.

⁴³ Hayakawa, supra note (37), p.88.

⁴⁴ Hayakawa, ibid. note, p.90.

⁴⁵ Nishitani, supra note (21), p.86.

parental abduction (Entführung) of EU children in Japan."⁴⁶ There, it points out that Japan has not fully complied with the Hague Convention, including a concern that many removal of children by one parent remain unresolved. And, it calls for a ban on removal of child by a parent.

In addition, it should be noted that, as the title of the resolution indicates, it calls for a ban not only on international removal, but also on domestic removal.

So, we will now look at removal of child within Japan.

3. Japan's Situation and Challenges Regarding Removal of Child

It has been pointed out that the situation regarding removals in Japan differs from the principles of the Hague Convention.

For example, it is pointed out that "In Japanese practice, it is said that once a situation of custody by one parent is formed due to removal and separation, that situation is often assumed in subsequent procedures for designating or changing the custodian or person with parental authority, or in procedures for requesting the handover of the child."⁴⁷ or "In divorce disputes, situations often arise in which one parent unilaterally remove the child away upon separation, or a non-custodial parent living separately removes the child. Properly speaking, disputes over the custody of a child should be resolved through consultation or, if consultation is not possible, through family court proceedings, and it is illegal to unilaterally removal a child without going through such procedures. However, in Japan, even if there is such illegal removal, under the practice that emphasizes the status quo, the illegality is not regarded as a problem at all, but rather the person who illegally removes the child away is generally in a favorable position in determining the person who has parental authority."⁴⁸

This situation of winning by removal, so to speak, can be said to be substantially approved by judicial precedents. In other words, in a case in which a parent whose child

⁴⁶ European Parliament website

([https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2020/07-08/0182/P9_TA\(2020\)0182_DE.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2020/07-08/0182/P9_TA(2020)0182_DE.pdf)). The German version is referenced. The German original "Entführung" is usually translated as "abduction," but here, in conjunction with other parts of the text, I have used "removal." In this paper, the word "removal" is used in line with many Japanese papers on this issue, but the choice of such expression may or may not already be out of sync with international sensibilities.

English:[https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2020/07-08/0182/P9_TA\(2020\)0182_EN.pdf](https://www.europarl.europa.eu/RegData/seance_pleniere/textes_adoptes/definitif/2020/07-08/0182/P9_TA(2020)0182_EN.pdf)

⁴⁷ Yoshinobu Handa, *The Hague Convention and Child removal: Germany's Experience and Implications for Japan*, Law Bunka Sha (2013), p.11.

⁴⁸ The 60th anniversary of the founding of the Japan Federation of Bar Associations, "Sixty Years of the JFBA" (2009), p.278 and following. In addition, February 18, 2011, In the first opinion's purpose of Opinion 1.(4) of "Opinion on Measures to be Taken upon the Conclusion of the 'Convention on the Civil Aspects of International Child Abduction' (Hague Convention)," the JFBA stated the request for the Japanese government that the Hague Convention "does not apply to ... domestic removal of child ... clarify and make known." While it is true that the Hague Convention covers international removal of child, as discussed in the text, its basic concept should also apply to domestic removal, and this opinion of the JFBA would be misleading at the very least.

was taken filed a habeas corpus petition seeking the child's extradition, the Supreme Court held that "When a husband and wife jointly exercise parental authority over their infant child, unless there are special circumstances, the custody of the infant by one of them should be considered legal as based on parental authority."⁴⁹ In other words, when one parent with parental authority removes the child away from other parent and takes custody of the child without consent, "it is legal unless there are special circumstances," as a result, unilateral removal is not considered illegal either. In other words, "In Japan, when separation, it is common for a mother to leave with her child without any consent, and such an event would not be considered illegal removal or abduction. However, in other countries, it seems to be evaluated as such, and the Hague Convention is based on such a premise."⁵⁰ In other words, the principle and exception are reversed from the Hague Convention's position, which is based on the principle of "restoration of the status quo" prior to removal.

This situation has remained problematic even after joined the Hague Convention. For example, at the 200th Diet session of the House of Representatives Committee on Legal Affairs on November 27, 2019, Representative Seiichi Kushida addressed this issue and pointed out the discrepancy between the treatment of removals in Japan and the Hague Convention.⁵¹ Also, the European Parliament resolution we saw earlier also indicates this.

In this way, at least with regard to domestic removal of child, Japan is in a situation that differs from the international trend of human rights guarantees as seen in the Hague

⁴⁹ Supreme Court, October 19, 1993, *Minshu*, Vol.47, No.8, p.5099.

⁵⁰ Hidetoshi Nomura, "Judgment Criteria for Provisional Handover of a Child in a Temporary Restraining Order Prior to Trial," *Civil and Commercial Law Journal*, Vol.141, No.6, p.109 (p.115). This is a review of the Tokyo High Court decision of December 18, 2008 (*Family Court Monthly*, Vol.61, No.7, p.59). Regarding this decision of the Tokyo High Court, although it was made prior to the ratification of the Hague Convention, Nomura considers it to be in line with the concept of the Hague Convention. The same evaluation is made, for example, by Shinichiro Hayakawa, "Substantive Law Issues Concerning Child Extradition," *Ronkyu Jurist* No.32 (2020), p.72 follows (p.79). However, even though "there are signs of such changes in court precedents and academic theories agreeing with this direction" (Hayakawa *ibid.*), it is fair to say that even after the ratification of the Hague Convention, there has been no significant change in domestic removal, as noted in the text.

⁵¹ House of Representatives website (http://www.shugiin.go.jp/internet/itdb_kaigiroku.nsf/html/kaigiroku/000420020191127012.htm).

Convention.⁵² The Hague Convention is based on the premise that removal of child is detrimental to the interests of the child. Therefore, we would like to make a few remarks on the interests of the child from the viewpoint of human rights.

4. Consideration - Constitutional Argument on Removal of Child

As the relationship between the Hague Convention and the Convention on the Rights of the Child is noted,⁵³ removal of child is not merely a private law issue, but is considered to involve a human rights issue, i.e., a constitutional issue.⁵⁴ In this section, we will attempt to examine some human rights. First, with respect to the child who was removed away, we will examine the issues of freedom of residence and relocation and personal rights, followed by the issue of respect for the individual. Then, with regard to the parent from whom the child was taken, we will examine the issue of personality rights.

(1) Freedom of Residence and Personality Rights

Removal is an act of tearing off a child from his or her previous living environment at the will of the taking parent, regardless of (or against) the will of the child himself or herself or the other parent. Such removal may indeed be necessary in some cases because of so-called domestic violence (DV) or other reasons, and may be unavoidable in light of the interests of the child. However, even if the couple lacks amicableness, from the child's point of view, there are also many cases where the child has a peaceful relationship with

⁵² Regarding this, Hayakawa, again as a matter of fact, states the following. "In domestic cases, the totality approach is taken whereas 'the court will determine which parent is appropriate to take custody of the child from the viewpoint of this best interest by weighing the various circumstances of the case in its totality', though, in international cases, the restoration to the original state approach is taken whereas 'restoration of the status quo prior to illegal removal is a top priority.'..... However, it is necessary to consider the fact that the method of judgment differs greatly between domestic and international cases, where the handover of the child was also ordered and the method of execution was also aligned." (Hayakawa, supra note (50)). (p.77). And, "Given that removal is an extremely serious matter for the welfare of the child, the need for the restoration to the original state approach is emphasized because removal of child must be deterred at all costs. The Hague Convention is based on the recognition that removal is a serious violation of the welfare of the child, and the author believes that such an assessment should be the basic premise. (p.80 of the same paper). What follows in this paper, which will be discussed from a constitutional perspective, is an attempt to show that removal is an "extremely serious problem" from the standpoint of human rights.

⁵³ Otani and Nishitani, supra note (27), p.121.

⁵⁴ Strictly speaking, child removal is a private matter: the relationship between the parent who took the child and the child removed, and the relationship between the parent who took the child and the parent from whom the child was removed. However, there is a reconciliation of constitutionally protected interests between private parties, as in the case of defamatory expressions, for example, and I believe that the same could be said about removal of child. In this section, we will assume the situation of removal of child between a husband and wife, which seems to be typical of the situation envisioned by the Hague Convention.

both parents. In the latter case, the child would have been forced to make an unwanted move, even if the means were peaceful.

This would be an issue of violation of the child's freedom of passive movement or freedom of residence in the sense of remaining in the place of said community life⁵⁵ (Article 22(1) of the Constitution).

The freedom of residential relocation "has the character of an economic freedom connected with the freedom of choice of occupation, obviously. However, the freedom of residential relocation is related to spiritual freedom when mental exchange with others is premised on physical movement. (Nobuyoshi Ashibe (Revised by Kazuyuki Takahashi), Constitution [6th ed.], Iwanami Shoten (2015), p.230) Furthermore, in view of the impact of residential relocation on personality development, freedom of residential relocation is also directly related to personal dignity."⁵⁶ In other words, residential relocation is also significant in terms of personality development.

In addition, although children are in the custody of their parents, they usually do not live only in relation to their parents. For example, a child may interact with neighbors, teachers and classmates at school, including kindergartens and nursery schools. A child grows humanly and spiritually and forms his or her personality through interaction not only with the parents but also with various people in the place where he or she lives. In this respect, removal unilaterally and abruptly cuts off such interaction. "From the viewpoint of the welfare of child, when a child who is living peacefully under one parent, the use of force to bring a child under other parent's control causes a sudden change in the child's living environment, and the adverse effects on the child's physical and mental health cannot be underestimated."⁵⁷ In other words, in view of the "effects on personality development" and the "adverse effects on mental health," it should be said to be an infringement of the right of personality rights in the sense of the child's "personal dignity" or personality development (Article 13 of the Constitution). In this case, in particular, it should be noted that "infants are extremely plasticity and grow from moment to moment, so the influence of their environment is extremely large, and if they are separated from their proper upbringing environment, their mental wounds and scars will be hard to heal while a short period of time."⁵⁸ That personality development is a constitutionally protected interest obviously, because, for example, freedom of expression (Article 21, paragraph 1) which is "the personal

⁵⁵ Although the freedom to move residence of the child is subject to the restriction of designation of residence by the person with parental authority (Article 821 of the Civil Code), removal should not be the case of this restriction because removal is a transfer of the residence of the child by only one of the parents who should jointly exercise parental authority, against the will of the other parent.

⁵⁶ Jyouji Shishido, "§22 III Freedom of Relocation of Residence," in Yasuo Hasebe (ed.), Annotated Constitution of Japan (2), p.473.

⁵⁷ The Supreme Court Decision of December 6, 2005 (Penal Code, Vol.59, No.10, p.1901) supplemental opinion of Judge Isao Imai. This case is different from the situation that this paper assumes, as it is a case in which the father took away his infant who was under the custody of the mother who lived separately. However, it can be said that the points made by Judge Imai are applicable to the case assumed by this paper.

⁵⁸ Noriko Mizuno, "Infant Delivery Request between Separated Couples and Habeas Corpus," 1993 Commentary on Important Precedents, p.95 and follows (p.96).

value that an individual develops his or her own character through speech activities."⁵⁹ and the right to education (Article 26, paragraph 1) which is "an essential prerequisite for individuals to develop personality and lead meaningful lives in society."⁶⁰ are protected. And it can be said that not only personality development for individual acts such as expression and education, but personality development in general is guaranteed by the right to the pursuit of happiness (Article 13), which is a comprehensive human right, because it is linked to the pursuit of happiness of the individual. In other words, removal of child is an act that violates the child's personality rights in the sense of the right to personality development in the place where he or she actually lives, which is protected under Article 22, Paragraph 1 and Article 13 of the Constitution.

(2) Respect as individuals

Removal is also problematic in relation to respect as individuals of child itself (Article 13 of the Constitution). This is because, in case of removal, the personality as individual of the child is not fully respected

"The conflict between parents over a child becomes extremely serious because of the tension over the divorce. Parents, not only having an attachment to the child, but also with having resentment, hatred, or obsession against the other party, tend to aim to completely eliminate the other party and make the child their personal property. Furthermore, the traditional practice in Japan has been for the non-custodial parent to cut off contact with the child after divorce, and the personalization of the child by the custodial parent has tended to become the norm. Since joint custody after divorce has not been legislated, parents try to make the acquisition of de facto custody before the divorce is finalized in order to obtain custody after divorce. However, for the children themselves, it is desirable to have interaction with both parents, unless a parent is exceptionally harmful to them. Instead, it is child abuse for a child to be subjected to the contest by force or to be infused with hatred of one parent."⁶¹

In Article 13 of the Constitution, "'Respected as individuals' means 'a declaration of respect for the dignity and personality of the individual'" (Supreme Court, March 24, 1948, Penal Trial No.1, p.535), which means to recognize each person as a personality, to give consideration to him or her as a dignified being, and to value the free development of his or her individuality. 'Personality', first and foremost, is not a 'thing' that is exclusively objected to be controlled, used, or dispositioned, but rather a subjective status that allows a person to assert his or her own existence and to work to realize the meaning and purpose of his or her existence."⁶² In other words, respecting a child as an individual means that he or she should not be ", first and foremost, is not a 'thing' that is exclusively objected to be controlled, used, or dispositioned." And this respect as an individual is "the right of the individual to demand treatment as a dignified being."⁶³

However, as quoted above, it cannot be denied that removal of child is a means to

⁵⁹ Nobuyoshi Ashibe (revised by Kazuyuki Takahashi), Constitution (7th ed.), Iwanami Shoten (2019), p.175.

⁶⁰ Ashibe, supra note (59), p.273.

⁶¹ Mizuno, supra note (58), p.96.

⁶² Shinichi Doi, "§13 II Respect as Individuals," Yasuo Hasebe, supra note (56), p.69.

⁶³ Yasuyuki Watanabe, Jyouji Shishido, Kazuhiko Matsumoto, and Tatsuro Kudo, Constitution I: Fundamental Rights, Nippon Hyoronsha (2016), p.116 (Matsumoto).

"personalize" the child on hand and to make the acquisition of custody de facto. This should be kept in mind, especially in the case of infants who are not fully capable of "asserting their own existence." In addition, when the child is the object of a deprivation contest, the child may become the object of the parent's use of force. In other words, the child will not be fully respected as an individual by the parent who removes him or her away. This is contrary to the first sentence of Article 13 of the Constitution, which stipulates respect as individuals, and violates the child's right to be treated as a dignified being.

(3) Human rights of the left behind parents (parents whom children were taken.)

Removal of child should be considered, not only on the child view, but also on the human rights of the left behind parents.

A parent whose child is taken is suddenly and unilaterally cut off from his or her relationship with the child. This is a severance of the parent-child relationship, which should be considered the most intimate human relationship, and should be considered a violation of the personal rights guaranteed by Article 13 of the Constitution. The right to the pursuit of happiness guaranteed by Article 13 of the Constitution is "the right to the interest essential to the personality existence as individuals."⁶⁴ This includes retaining identity as individuals and personality development. And relationships with others are important to an individual's identity and personality development. In other words, people define their own existence in relation to others (e.g., becoming parents in relation to their children), confirm the meaning of their existence (e.g., feeling fulfilled in raising children), and form their personalities. The relationship between parents and children is the most intimate of all human relationships and has an extremely strong influence on individual identity and personality development. Such a parent-child relationship is usually supported by a physically bonded life such as cohabitation. In other words, the cohabitation of parents and children is closely linked to their personal rights. However, removal of child is an act of abrupt and unilateral deprivation of such cohabitation between parent and child, and should be regarded as a violation of the personal rights of not only the child but also those of the left behind parent.

In addition, the German crime of "separation of minors" mentioned above is considered to be based on the rights of the parents.

And, article 9 of the Convention on the Rights of the Child also states that "a child shall not be separated from his or her parents against their will."

Thus, removal of child not only infringes on the freedom of residence and relocation and personal rights of the child removed away, but also infringes on respect as individuals and the personal rights of the left behind parent, thereby creating multiple human rights violations. In this light, for the sake of the rights of the child, removal of child by one parent in Japan without the consent of the other parent should be "restored to its original state" in accordance with the fundamentals of the Hague Convention.

Conclusion

With the ratification of the Convention on the Elimination of All Forms of Discrimination against Women, Japan enacted the Equal Employment Opportunity Law and made further amendments to it to promote gender equality. In this regard, Japan's domestic human rights guarantees have progressed in line with international trends in

⁶⁴ Ashibe, supra note (59), p.120.

human rights guarantees. There has also been a certain amount of progress in domestic human rights guarantees, triggered by the ratification of other human rights treaties.⁶⁵ In this way, it is clear that international trends in human rights guarantees have had an important influence on the development of human rights guarantees in Japan.

On the other hand, with regard to the rights of the child, which the Hague Convention seeks to protect, since the ratification of the Convention, it appears that human rights guarantees for international removal of child have gradually been implemented in line with the intent of the Convention, through the enactment of laws implementing the Convention and its amendments. However, domestic removal of child remains in the same state as before. This may have something to do with the fact that many domestic removal is carried out by the mothers.⁶⁶ Then, in light of the fact that in Japan today, at the scene of the return of a child, the decision as to which parent is appropriate to take custody of the child is also comprehensively taken into consideration, the idea that "the child is basically appropriate to be taken into custody by the mother" is underlying. This would be inimical to the Convention on the Elimination of All Forms of Discrimination against Women. If this is the case, then Japan's practice regarding domestic removal of child is isolated and obsoleted from the world in double meaning. I would like to conclude that domestic removal of child should be deal with in accordance with the principle of the Hague Convention.

⁶⁵ For example, regarding developments in the field of family law due to the conclusion of the Convention on the Rights of the Child, Otani, *supra* note (3), p.29 and follows. It is pointed out that not only the ratification of the Convention, but also the recommendations of the Committee on the Rights of the Child play an important function. This would also be true for the Committee on Discrimination against Women.

⁶⁶ Hayakawa, *supra* note (50), p.80.

[Appendix] This study was funded in part by a research grant from attorney Hirokazu Nakano. He also provided us with several important documents. I thank him for his support.