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## **Domestic Violence and the Implementation of the Hague Convention on the Civil Aspects of International Child Abduction: Japan and U.S. Policy**

Sawako Yamaguchi<sup>1</sup> and Taryn Lindhorst<sup>2</sup>

### **Abstract**

Around the world, an increasing number of married couples have at least one person who is not a citizen of their spouse's country. The global growth in transnational families has necessitated the development of international legal agreements to address issues that have arisen upon the dissolution of these relationships. Of particular note to feminist scholars has been the issue of domestic violence in these relationships and how these circumstances are addressed under international agreements such as the Hague Convention on the Civil Aspects of International Child Abduction. In 2013, Japan became the last of the major industrialized countries to sign on to the Hague Convention. This comparative, case-based policy analysis centers concerns about domestic violence in the development and implementation of the Hague Convention in Japan and the United States. Although Japan has a much shorter legislative history regarding domestic violence (DV), it has taken a much stronger position about DV in its adoption of the Hague Convention. Based on this analysis we propose methods for addressing domestic violence in Hague cases in both countries that prioritize the safety needs of abused mothers and their children.

*Keywords:* International Policy, Transnational Child Abduction, Domestic Violence, Japan

### **Introduction**

Transnational families are those in which one or both members of the couple are resident in a country which is not their birthplace, or in which at least one member does not have citizenship status (Lindhorst & Edelson, 2012). In the United States, the number of marriages between U.S. citizens and persons who are foreign-born has increased substantially (Federal Interagency Forum on Child and Family Statistics, 2009). Likewise, in many other countries as global migration has increased, marriages and relationships between citizens and non-citizens have grown requiring the development of transnational legal agreements to address issues that have arisen upon the dissolution of these relationships (Uchida, 2013). The Hague Convention

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on the Civil Aspects of International Child Abduction (hereafter, the Hague Convention) is one such international treaty.<sup>3</sup>

No one enters into a marriage or relationship with the expectation that they will become a victim of spousal abuse; however, in some transnational families, partners are perpetrating abuse against their spouse and possibly their children. Women facing abuse from a partner often turn first to family members and friends for emotional and practical assistance in coping with the abuse. When seeking out family support means leaving one nation for another, international treaties such as the Hague Convention may be invoked. Under the Hague Convention, a battered woman who has fled across international borders can be held responsible for unlawfully removing her children, and the children can be returned to the left-behind parent in the other country, creating a legal quandary for women trying to protect themselves and their children from danger.

In 2013, the Japanese Diet (equivalent to the U.S. Congress) agreed to become a signatory to the Hague Convention and entered negotiations with the United States to become a treaty partner. Japan has one of the highest rates of open child abduction cases among the countries the U.S. tracks, with more than 100 children known to have been abducted to or retained in Japan without the permission of both parents (Bond, 2009).

The purpose of this article is to use a case-based approach (Gerring, 2004) to compare how concerns about domestic violence (DV) were addressed in the development and implementation of the Hague Convention in the U.S. and Japan. The field of comparative policy analysis is most frequently approached in a gender-neutral fashion that ignores the ways in which policy has differential effects for women (Kenney, 2003; Mazur, 2009; McPhail, 2003). This study draws on feminist standpoint theories (Hartsock, 2004; Smith, 1987), feminist policy analysis strategies (Marshall, 1999; McPhail, 2003) and discourse tracing methods (LeGreco & Tracy, 2009) to answer the research question of why Japan was more successful than the U.S. in including domestic violence in its adoption of the Hague Convention. Using primary source materials from the Japanese government and press,<sup>4</sup> texts of relevant laws from both countries, and U.S. and European research on the Hague Convention, we argue that Japan's approach to implementation has been more aware of the issue of DV, despite its shorter policy history in addressing these issues internally. To situate this analysis, we start with a brief description of the Hague Convention and current scholarship on the issue of domestic violence in transnational relationships. We then compare the context of domestic violence in Japan and U.S., describe the Hague Convention ratification process in Japan, and provide a comparison of the implementing legislation in each country regarding its recognition of domestic violence. We use this information to theorize about reasons for policy differences in the Hague Convention process between the U.S. and Japan. We end with a discussion of how this information can be used to craft policies and practices related to the implementation of the Hague Convention in both countries that acknowledge and respond to the safety needs of abused mothers and their children.

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<sup>3</sup> The Hague Convention was ratified in 1980 and came into effect in 1983. The Convention has now been adopted by 90 states out of 195 states all over the world, the majority of which are European, North American and Latin American countries. See Lindhorst & Edleson (2012) for a review of the Hague Convention origin.

<sup>4</sup> All translations of Japanese materials were undertaken by the first author, or were obtained as official translations from Japanese to English from official Japanese governmental sources.

## **The Hague Convention and Recognition of Domestic Violence**

In 1983, under the auspices of the Hague Conference on Private International Law, over 30 countries ratified the Hague Convention (Lindhorst & Edleson, 2012). The Hague Convention was designed to protect children under the age of 16 from the harmful effects of having one parent unilaterally decide to leave a country in which the child lived, without the permission of another parent, and in violation of the custody rights of the left-behind parent (Hague Conference on Private International Law, 2013). The treaty guarantees the prompt return of children who have been illegally removed to or retained in another country from their country of habitual residence<sup>5</sup> (Beaumont & McElevay, 1999; Garbolino, 2000; Weiner, 2000).

A parent who is the subject of a Hague petition may mount a defense against the return of the child by proving to the court that 1) the child will face a “grave risk” of physical or psychological harm if returned, 2) the other parent consented to the removal of the child, 3) if more than a year has gone by between the time the child was taken from the other country and the Hague petition was filed, 4) the child is of sufficient emotional maturity and raises objections to being returned and 5) the child would face the possible violation of his/her human rights as a result of the situation in the other country (see Articles 8 – 20 of the Hague Convention, Hague Conference on Private International Law, 2013). In practice, article 13(b), the “grave risk” exception, has been most frequently invoked by parents in cases where domestic violence was found by the courts and who are trying to prevent the return of their children to an abusive spouse (Hilton, 1997; Vesneski, Lindhorst & Edleson, 2011).

In the initial development of the treaty, the negotiators thought the Hague Convention would primarily apply to non-custodial parents (usually fathers) who had abducted their children (Weiner, 2000). Studies in the past decade have shown that, contrary to the founders’ beliefs, the majority of people who have been subject to petitions under the Hague Convention have been women who have taken their children from one country to another and who are the primary custodians of their children (Lowe, 2007; Lowe, 2011). Unfortunately, it is unknown what proportion of these situations includes domestic violence. The focus of the Hague Convention is on the child, and the treaty does not expressly recognize domestic violence against a spouse as a factor in child abductions,<sup>6</sup> despite research evidence that domestic violence is frequently a rationale underlying child abduction (Chiancone, Girdner & Hoff, 2001; Greif & Hegar, 1993; Johnston, Sagatun-Edwards, Blomquist & Girdner, 2001). Domestic violence is not mentioned in the Convention, and none of the exceptions to return, including the grave risk standard; explicitly mention domestic violence as a reason to consider when making a decision about whether the child should be returned to the country of habitual residence. Courts around the world have had little guidance on how to address adult-to-adult domestic violence in making decisions about child residence.

Recent scholarship has investigated the role played by domestic violence in decisions of mothers to leave one country for another (Lindhorst & Edleson, 2012; Shetty & Edleson, 2005;

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<sup>5</sup> Habitual residence is an ill-defined concept legally. Usually, it means where the child was most recently residing, if there is an indication by the parents that they undertook the residence with a “settled purpose” in mind (i.e., the child was enrolled in school in the habitual residence, parents sold all their possessions in a previous country, etc.). See Lindhorst & Edleson (2012) for a discussion of habitual residence.

<sup>6</sup> Although domestic violence was not explicitly mentioned in the Convention, discussions during the drafting of the Convention did recognize that children may be taken out of a country for reasons related to domestic violence (Weiner, 2000). However, these discussions were not necessarily available to U.S. judges, particularly those in state family court systems, so these framing concerns have not been central to the implementation of the treaty in the United States.

Vesneski, Lindhorst & Edleson, 2011). Case studies of women who were petitioned under the Hague Convention in U.S. courts and who experienced domestic violence showed that the majority of children were returned to the country from which the woman fled (Lindhorst & Edleson, 2012; Vesneski, Lindhorst & Edleson, 2011). In those cases where a mother was able to show that the father had physically harmed a child, women and children were allowed to stay in the U.S. In those cases where the father’s violence had been directed only at the mother (even when children witnessed the abuse), judges usually returned children to their fathers in the other country (Lindhorst & Edleson, 2012). These cases show that women may be faced with the choice of fleeing an abusive spouse in an attempt to protect her own and her children’s lives, health and well being or staying in a physically dangerous situation. When leaving includes crossing a national border, the Hague Convention may become a legal option for the abusive spouse to use to continue to exert control over the victim.

### Comparison of DV Incidence and Laws in the U.S. and Japan

According to epidemiological surveys, rates of domestic violence in the U.S. and Japan are similar. In Japan, the major epidemiological survey on domestic violence was the Study of Violence between Men and Women conducted by the Gender Equality Bureau, a division of the Cabinet Office (Gender Equality Bureau, 2012). Three questions ([1] Have you experienced hitting, kicking, throwing things, or pushing from your spouse? [2] Have you experienced offensive language such as maligning your personality, having your social relationships monitored, or being threatened with harm to you or your family members? [3] Have you experienced forced sexual intercourse from your spouse?) were used to assess physical, psychological and sexual victimization. One quarter of Japanese women have experienced physical violence (25.9%), 17.8% psychological violence and 14.1% sexual violence. Overall, one third (32.9 %) of Japanese women have experienced at least one form of spousal violence. In the most recent survey by the Centers for Disease Control, the National Intimate Partner and Sexual Violence Survey (Black et al., 2011), 24.3% of women report physical violence from a spouse, 9.4% were raped and 10.7% were stalked (a form of psychological violence). In the United States, 35.6% of women experienced at least one form of spousal violence. These rates show that roughly equivalent numbers of women in both countries experience some form of domestic violence.

**Table 1. Comparison of Japan and U.S. Laws on Violence against Women**

Characteristic	Japan	United States
Title	Act for the Prevention of Spousal Violence and the Protection of Victims (Act. No. 31 of 2001)	Title IV – Violence against Women Act (of the Violent Crime Control and Enforcement Act of 1994)
Year Enacted	2001 (reauthorized 2004, 2007, 2013)	1994 (reauthorized 2000, 2005, 2013)
Definition of Domestic Violence	“Spousal violence” – bodily harm of one spouse (illegal attacks threatening the other’s life or body) or the words and deeds of one spouse that cause equivalent	“Domestic violence” includes felony or misdemeanor crimes of violence committed by a current or former spouse of the victim.

psychological or physical harm to the other (p. 3).

Definition of Spouse	De facto state of marriage, even if it has not been legally registered. Also includes those that have cohabited together, or those who are divorced after being in a de facto state of marriage, even if it were not legally registered.	Spouse or intimate partner includes spouse, a former spouse, a person who shares a child in common with the abuser, and a person who cohabits or has cohabited with the abuser as a spouse.
Protection Orders	Obliges the spouse to refrain from approaching the victim at the victim's home for 6 months, and to leave the domicile for 2 months.	Provides for interstate enforcement of protection orders, duration of which is determined by individual courts.
Domestic Violence Support Services	Creates Spousal Violence Counseling and Support Centers within Women's Consulting Offices in each prefecture.	Provides for funding for domestic violence shelters in each state, distributed through grants to each state.

In recognition of domestic violence, both countries have enacted laws that define DV, fund supportive services and provide legal remedies to victims. Table 1 provides a brief overview of the major legislation on domestic violence in the two countries – in Japan, the Act for the Prevention of Spousal Violence (APSV), and in the United States, the Violence against Women Act (VAWA). In both laws, domestic violence is defined as violence from a spouse to whom the victim is currently married, was married to but has now divorced, or with whom the victim cohabited. The U.S. law specifies that domestic violence is a felony or misdemeanor crime as demonstrated by physical injury or sexual abuse. In contrast, the law in Japan defines domestic violence more broadly, encompassing both physical acts of bodily harm, but also “words and deeds ... that cause equivalent psychological or physical harm” (APSV, 2001, p. 3). Both countries provide for funding of supportive services and emergency shelters to victims of domestic violence. In Japan, the emergency shelter system was incorporated into Women’s Counseling Centers, which had been set up in each prefecture (equivalent to a state in the U.S.) based on Anti-Prostitution Act enacted in 1956 to address prostitution (Yamaguchi, 2011). In addition to these public agencies, DV victims’ services are also provided by private agencies run by domestic violence advocates.

The APSV created the protection order system in Japan. Japanese protection orders can be issued for the DV victim, the victim’s children, relatives, or persons who have close relationships to the victim. Violation of a protection order is punishable by imprisonment for not more than one year or a fine of not more than 1,000,000 yen (approximately US \$8,840.00) (APSV, 2007). In 2012, Japanese courts issued 2,482 protection orders in 78.7% of requests (Gender Equality Bureau Cabinet Office, 2013) for a population-adjusted rate of 1.94 protection orders per 100,000 people. In comparison, U.S. courts issued an estimated 1.7 million protection orders in 2008 (Communicating with prisoners, 2016), for a population-adjusted rate of 559.03 protection orders per 100,000 people.

While rates of DV are similar across the two countries, Japan has been slower to develop policy responses to the problem than the U.S. The major legal protection device for victims of DV

(protection orders) is seriously underutilized in Japan in comparison to the U.S. These findings suggest that DV may be a more stigmatized issue in Japan than in the U.S.

### **Ratification of the Hague Convention in Japan**

The contrast in the timing of the adoption of a policy response to child abduction is even more dramatic between the two countries. The United States entered into the Hague Convention in July 1988 through the passage of the International Child Abduction and Remedies Act ([ICARA] 42 U.S.C.A. § 11603). The U.S. was one of the earliest to ratify the treaty in the 1980s. The basic concept of the Hague Convention was very similar to already existing U.S. domestic acts regarding child custody and parental abduction, namely the Uniform Child Custody and Jurisdiction Act and Parental Kidnapping Prevention Act.

At the turn of the century, Japan was the only G-8 country<sup>7</sup> that had not ratified the Hague Convention (Bond, 2009). Despite repeated exhortations, particularly from the U.S., the United Kingdom, Canada and France to adopt the Convention, Japan was slow to do so (Boykin, 2012; Kachi, 2013). Japanese legislators from the long-ruling Liberal Democratic Party (LDP) had reservations about a treaty, which had a substantially different view of child custody after divorce than was traditional in Japanese society. Japanese civil code stipulated single, not joint, custody, and this custody was almost always awarded to the mother, so Japanese mothers were customarily empowered to make decisions about their children without having the input of the father, including decisions to relocate to another country (Jones, 2013).

In 2009, after more than 50 years in power, the LDP was replaced by the Democratic Party of Japan (DPJ) which had a much more favorable view towards the Hague Convention. The new government convened a series of meetings about the Hague Convention and announced in 2011 plans to put forward legislation to the Japanese Diet to proceed towards accession to the treaty (Handa, 2013). Despite a change in the ruling party in 2012, progress towards adopting the Hague Convention continued, in part because of Japan's desire to repair diplomatic ties with the U.S. after the breakdown of talks on relocating the U.S. Marine base at Futenma and the Trans-Pacific Strategic Economic Partnership Agreement ("Prime Minister In Hurry...", 2013). Both houses of the Japanese Diet passed the enabling legislation for joining the Hague Convention in 2013 with implementation to begin in April 2014.

As the Diet was hearing testimony on the Hague Convention, the Japanese press presented several stories of Japanese mothers who had returned to Japan from the U.S. after their marriages deteriorated. The most famous case was that of Christopher Savoie and his wife Noriko. She returned to her family in Japan with her two children after her marriage to Savoie ended. While living in Japan, Noriko asked Savoie for divorce, but he convinced her to move with him to the US, ostensibly to try and repair the marriage. However, Savoie quickly divorced Noriko in the U.S., married another woman soon after, and received joint custody in Tennessee. The William County Court in Tennessee required Noriko to maintain Tennessee residency per the joint custody agreement. In a state of linguistic, economic and social isolation, Noriko decided to return to Japan with her two children without permission of her ex-husband or the U.S. court. Savoie traveled to Japan in an effort to reclaim his children, but Japanese officials arrested him on the charge of abduction of minors and the children were returned to their mother, where they still remain. After

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<sup>7</sup> The G-8 refers to the eight most highly industrialized countries in the world – Canada, France, Germany, Italy, Japan, Russia, United Kingdom and United States. Russia was suspended from membership because of aggression in Ukraine in 2014 after the proceedings we reference here.

Savoie was released, he sued his ex-wife in the county court in Tennessee for time lost not being able to see his children, and the judge awarded US \$6,100,000 in damages (Boykin, 2012; “Chris Savoie Wins...”, 2011; “Court Rejects Suit by Tennessee...”, 2012; “Dissolution of International Marriage...”, 2011; “Going Home Kidnapping 100 Children...”, 2009; “Sympathizing with Noriko Savoie”, 2009). Another woman, Hiroko (fictitious name) told reporters that her ex-husband physically abused both her and her small son. Despite these allegations, she lost custody of her son in the US and returned with him to Japan to prevent her ex-husband from having custody (“How Do They Judge Custody...” 2011).

During public hearings on the Convention, Japanese domestic violence advocates repeatedly testified as to their concerns about domestic violence experienced by Japanese women married to non-Japanese nationals. Transnational marriages in Japan have grown in frequency, but clear gender differences exist: non-Japanese husbands are citizens of countries, which are state members of the Hague Convention; however, non-Japanese wives are primarily from countries that have not adopted the Hague Convention. Therefore, the majority of Hague Convention cases brought in Japan involve a Japanese mother returning to Japan with her child(ren).

The advocacy group Ijuren (an abbreviation of *Ijurodoshato rentaisuru zenkoku nettowaku*, originally a support group for immigrants which also includes many DV shelter personnel) testified about their experiences working with women who had fled other countries because of the DV they experienced. They noted that most women who crossed international borders with their children were DV victims and their children were victims of child abuse. An attorney who submitted an article to the Ijuren journal, *Migrants Network* noted that most of his clients fleeing from overseas countries with their children were DV victims (Ijuren, 2013). Research conducted by the Japanese Bar Association on child abduction showed that domestic violence is the most cited reason for parents to return to Japan (Japan Federation of Bar Associations, 2011). Ijuren raised concerns that ratification of the Hague Convention might subvert the interests of children and mothers who had experienced DV. In cooperation with other women’s groups, Zenkoku Sheruta Netto (the national DV shelter network) and concerned attorneys, Ijuren submitted testimony to each political party, and to the Committees on Judicial Affairs of both the House of Representatives and the House of Councilors (Ijuren. 2013). These concerns resulted in public pressure on the Diet to protect Japanese women who were victims of DV if the Hague Convention were ratified.

Japanese domestic violence advocate Keiko Otsu (a member of both Ijuren and Zenkoku Sheruta Netto) was asked to give testimony to the House of Representative Committee on Judicial Affairs. She noted that there were only four shelters in the United States that had outreach to and services for Japanese women (based on information from United States Department of State, 2012). The scarcity of culturally proficient DV services in the U.S. was provided as evidence that Japanese women would not be able to access the help and resources they would need to ensure their safety in the U.S. She suggested the following points for consideration in Japan’s implementing legislation: (1) The central authority should not provide the location of respondents (mothers) who are victims of DV, particularly those in DV shelters in Japan; (2) In cases where there is either child abuse or DV, the judge should not return the child(ren) to the habitual residence; (3) Japanese embassies in other countries should establish support systems for DV victims; (4) the government should provide legal assistance to DV victims after returning for at least three years; (5) the government should research the condition of children who were returned to a habitual residence other than Japan (House of Representative Minutes, 2013). To date, Japan has funded programs in Washington D.C., New York, Boston, Los Angeles, Seattle and Honolulu



(Ministry of Foreign Affairs, 2014), to provide support to Japanese women experiencing domestic violence in the United States.

Japanese joint custody advocacy groups (often known as fathers' rights groups in the U.S.) also influenced the debate on the Hague Convention. Historically in Japan, child custody has been awarded to the mother based on traditional beliefs about the role of mothers in child rearing (Kawashima, 2010). Starting in 2000, a movement began in Japan to advocate for joint custody for both parents. In 2008, this movement established a national group. They regarded the ratification of the Hague Convention as an opportunity to promote their joint custody goals since the Convention also included language about rights of access to child visitation that the group saw as similar to their aims. Unfortunately, some joint custody advocacy groups have minimized DV, asserting that the definition of DV is interpreted too broadly, that DV is often made up by mothers, that local governments and police favor DV victims and that DV perpetrators should still have the chance to see their children (Joint Custody Advocacy Groups Network, 2010-2013).

DV advocates were partly successful in persuading the Japanese Diet to include language in the enabling legislation that acknowledged domestic violence as a concern that would have to be addressed in Hague Convention hearings. The Draft Preliminary Plan for the Hague Implementation Act in May 2011 stated that DV should be grounds for not returning the child (Vice Ministers Conference, 2011). The Interim Report for the Hague Implementation Act issued in September 2011 suggested that either DV should be grounds for not returning the child to the habitual residence or that DV should be one of the matters considered before a judgment is made about returning the child (Ministry of Justice, 2011a). However, the embassies of the US, UK, France, Canada, Australia and New Zealand publicly protested the Japanese Implementation Act, advocating for more narrowly construed exceptions to return of the child that did not prioritize DV as a reason to deny return (Ministry of Justice, 2011b). The final act passed in 2013 included DV as one of the matters to be considered when deciding whether to return a child to the habitual residence (Act for Implementation of the Convention on the Civil Aspects of International Child Abduction, 2013).

### **Implementation of the Hague Convention in the U.S. and Japan**

Table 2 summarizes and compares the Hague Convention implementation laws in Japan and the United States. Several significant differences exist between the Japanese and American approaches to the Hague Convention. Most notably, the U.S. allows Hague Convention cases to be heard in any state or federal court in the country. Japan elected to centralize hearing of these cases into two courts in Tokyo and Osaka. The differences in these approaches means that a smaller group of attorneys and judges in Japan will be able to specialize in Hague Convention case law, whereas in the United States, the dispersion of responsibility for these cases has meant that judges and attorneys have little training or practice in this area of the law (Lindhorst & Edleson, 2012).

**Table 2. Comparison of Hague Convention Implementation in the United State and Japan**

Aspect	Japan	United States
Law Title	Act for Implementation of the Convention on the Civil Aspects of International Child Abduction	International Child Abduction Remedies Act

Implementation Date	April 1, 2014	July 1, 1988
Central Authority	Ministry of Foreign Affairs	U.S. Department of State, Office of Children's Services
Courts Hearing Cases	Tokyo Family Court, Osaka Family Court	Any State or Federal court (n ≈ 40,000)
Fees	With regard to procedural costs, the parties shall bear their own costs. Costs such as examination of the facts, examination of evidence, summons and notification may be lent by the national treasury.	If petitioner's case is upheld, respondent is responsible for all court costs, legal fees, transportation and childcare costs. If respondent is successful, each party is responsible for their own fees
Acknowledgement of Domestic Violence	Courts must assess "whether or not there is a risk that the respondent would be subject to violence, etc. by the petitioner in such a manner as to cause psychological harm to the child, if the respondent and the child entered the state of habitual residence." <sup>a</sup>	None

Allocation of legal fees also differs between the two countries. Japan stipulates equal payment with regard to procedural costs, while the U.S. makes a respondent (usually the mother) responsible for all court costs if a petitioner's case is upheld. Mothers fled from an abusive spouse, might be forced to cover the fees of both of parties as well as being separated from their child(ren) if they lose their case.

The most significant difference between the two policies is in the recognition of domestic violence. Japan's Hague Convention implementation law states that domestic violence must be evaluated both as a form of child abuse and as a potential risk to the respondent of the Hague petition. In contrast, the International Child Abduction Remedies Act (ICARA), the U.S. Hague Convention implementing legislation, does not address domestic violence at all so respondents in the U.S. have generally been unsuccessful in having DV recognized as a reason to deny the return of their children to an abusive spouse (Vesneski, Lindhorst & Edleson, (2011). As a result, the U.S. law is more likely to ignore the legitimate safety risks to the child and the mother caused by returning them to their legally determined habitual residence.

## Conclusion

The U.S. and Japan are both modern, industrialized countries in which women experience roughly similar rates of DV. Although the U.S. has a longer history of legal responses to DV through internal laws (VAWA - 1994) than Japan (APSV - 2001), and a much more robust protection order effort, when it comes to integrating awareness of DV into international child custody concerns, Japan has clearly outpaced the U.S. These differences in integrating DV into the Hague Convention implementation might stem from three factors. First, the two countries have

adopted legislation on markedly different timelines. In the U.S., the Hague Convention was ratified a decade before VAWA when little research was yet available on the dynamics of domestic violence and its effects on children. In the past 30 years, scholars have demonstrated that child abuse occurs in around half of all families where domestic violence happens (Edleson, 1999) and, children experience serious physical, psychological and social consequences in both the near and long-term through their exposure to violence in the household (Graham-Bermann & Edleson, 2001; Margolin & Gordis, 2004). Japan, on the other hand, adopted legislation recognizing DV prior to its ratification of the Hague Convention and was able to use research on DV in its own countries and abroad to inform the Hague Convention development process. This difference in timing of national DV laws and the nature of the information available in each country as they debated the Hague Convention may be a primary source of the differences in how DV was integrated into each country's adoption of the Convention.

Second, Japan's definition of DV is more far-reaching than that of the U.S., which has primarily relied on underlying criminal codes regarding assault for the structure of its policy response. The Japanese definition of DV includes psychological abuse, which has long been acknowledged as one of the primary methods violent spouses use to control their partners (Smith, Smith & Earl, 1999). This more holistic understanding of domestic violence facilitated recognition in Japan of the deeper dynamics happening in families in which mothers choose to flee to another country for their own and their children's safety, leading to more emphasis being placed on the safety of parent and child than has been true in U.S. Hague Convention policy.

Finally, structural choices Japan has made in terms of how it will process Hague Convention cases has meant that women's groups focused on domestic advocacy have been able to influence the policy adoption process more directly than has been true in the U.S. Japan has elected to centralize and specialize its court system for Hague cases into two jurisdictions in Tokyo and Osaka, while Hague cases are heard in any federal, state or county-level court that the petitioner chooses in the U.S. This dispersion of cases in the U.S. has meant that advocacy efforts have to be undertaken at multiple legislative and legal levels simultaneously while in Japan, advocates have been able to focus at the national level to successfully advocate for DV-informed Hague Convention policy.

In moving forward in Japan and the U.S. (and other countries grappling with the Hague Convention and domestic violence), it will continue to be important to reduce the core policy ambiguities that remain in Hague Convention cases, namely how to balance the interests of the child for safety and connection to parents, how to ensure that victims of domestic violence are not further penalized in their efforts to ensure their own and their children's safety, and how to respect differences in judicial authority and cultural beliefs between countries faced with these complex child residency and custody concerns. If domestic violence is not taken into account when Hague Convention petitions are filed, children who are the supposed beneficiaries of the treaty may end up being victimized by the policy instead of helped by it.

## **Limitations**

This study presents the only known comparative policy analysis of the processes of adoption and implementation of the Hague Convention between the U.S. and Japan. The use of primary source material from Japan is a strength of this analysis, but given the reality that there are not official translations for many of the documents used, one drawback is our reliance on the first author's translation of these texts which may have included potential errors. We have relied

on publicly available data and drawn our conclusions based on our interpretations of these documents. However, there are likely additional issues that affected the integration of domestic violence into the Hague Convention in Japan and the U.S. that have not been noted in public documents and so remain, as of yet, undetermined.

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