

James Cook

April 6, 2017

Washington, DC

Foreign Affairs Subcommittee on Africa, Global Health, Human Rights, and International Organizations

Thank you Chairman Smith, members of the subcommittee and members of the audience watching these proceedings all over the world. I really appreciate this opportunity to speak to you a second time about my Hague Convention case in Japan and the problems encountered following the previous testimony given last July.

First, I want to say hello to my children because I have not been allowed any access to them since August 2015. This is in direct violation of Hague and evidence of Japan's continuing noncompliance.

"Hello children. I have not and will not give up on having us together again in USA. I am sorry this situation has not been resolved by now. I am closer than ever before to having us together again. Please hold on. Love, Dad"

There were two failed Hague return enforcement attempts in Nara, Japan in Sept 2016. Direct enforcement was done exactly as Japan requires – an almost SWAT-like ambush where they are living.

During the direct enforcement, I was only able to hear the voices of our older sons and I did not recognize those voices. It was a sobering reminder of how much has been missed. As a parent, to be unable to recognize your own child's voice brings a type of pain that cannot be described, but certainly can be felt as a visceral shudder by all parents.

At the direct enforcement attempts, there were court officers, police, psychologists and officials from JCA and U.S. Consulate. With the exception of the U.S. officials, it was obvious that everyone else was there to protect the children from me trying to see them and to thoroughly document an anticipated, calculated failure. I foolishly thought these officials I had paid to execute direct enforcement were there for my success. In reality, they were just playing their roles towards a pre-determined outcome - failure.

Furthermore, it severely traumatized our children in a way that did not need to happen.

With the unsuccessful enforcement attempts, Japan has once again failed to enforce a Hague return order. This time it was the one issued from the Osaka High Court on January 28, 2016. This indicates a systemic problem that was also reported in the annual Hague Compliance report issued just a few days prior to my previous testimony in July 2016. Now it's two years in a row that Japan has been unable to enforce its' Hague return orders. This is a systemic problem and should be concerning for any foreign entity planning to enter into contracts or binding agreements with parties in Japan. It certainly should concern foreign governments regarding allowing any of their children to visit Japan.

Assumption of subject matter jurisdiction, in accordance with Osaka High Court's (OHC) return order dated January 28, 2016, and a mirror return order were issued from Hennepin

County Family Court, MN on December 2, 2016, again on December 13 2016, again on January 24 2017, and on March 24 2017 and then a very thorough analysis of continued subject matter jurisdiction and return order, April 4, 2017. Will Japan even respect our court's rulings, as we are all expected to respect theirs?

I was granted temporary sole custody and our children and they were ordered released to me on December 17, 2016 at the US Consulate in Osaka for their return to the United States. Our children were not brought to Consulate on that day, in violation of two Mn court orders. Hitomi Arimitsu was in contempt of the MN court orders that mirrored the Hague return order of Japan.

I must acknowledge the significant efforts and resources put into place by DoS to provide for a successful reunification at the Consulate on December 17th. I thank everyone involved!

After a year of unsuccessful enforcement, on January 5, 2017, Hitomi Arimitsu filed for a modification to OHC return order citing 'grave risk' standard under Hague. The evidence of grave risk cited was of relative lifestyle change if returned. On February 17, 2017, the Osaka High Court Hague return order of January 28, 2016 was revoked and at this time, our children are not being ordered returned by OHC.

The revocation of previous return order indicates an invalid interpretation of the Hague Convention and provides further evidence of Japan's failure to comply with its international obligation. Article 28 of the Japanese Hague implementing legislation enables an expanded interpretation of grave risk that gives judges' broad leeway, way beyond international precedent and language of Hague, to deny returns. In this instance, it overturned their own previous ruling and in effect made use of the taking parent's ongoing noncompliance with the Hague return order in Japan and from the habitual residence of the children in Minnesota.

Article 28 is not compliant with Hague and it must be ordered changed by fellow Hague signatories.

The February 17, 2017 decision was signed by:

Presiding Judge	Toru Matsuda
Judge	Yoshinori Tanaka
Judge	Takahiro Hiwada

We have appealed this ruling to the Japan Supreme Court and we received permission on March 29th to have our case heard. According to my attorney, it will likely take up to 1 month for the Supreme Court of Japan to receive our case file from OHC. If the February 17th decision is overturned, as we fully expect, it may take an additional 6-12 months for a Supreme Court hearing. The projected timeline far exceeds the expeditious processing of Hague cases as outlined in the Convention. My case began in August 2015 and it is still unresolved. Japan, in yet another way, is not compliant with Hague.

On March 24, Hennepin County Family Court found Hitomi Arimitsu in constructive contempt of all previous orders. As part of her purge conditions, Hitomi Arimitsu must return to USA or release our children to me by April 23rd at the US Consulate in Osaka. Tomorrow, April 7th, Hitomi Arimitsu must surrender all passports for our children to U.S. Consulate in Osaka,

Japan or communicate to Mn court her intention to comply with April 23 return order.

On Monday and Tuesday, April 10-11, the G7 Ministerial Meeting Foreign Affairs will take place in Lucca, Italy.

*** I hereby respectfully request that our Sec. of State Rex Tillerson brings the topic up during this important G7 meeting, in order to have it subsequently discussed in the upcoming G7 Summit that will be held in Italy on May 26-27. Considering the two Italian children abducted and abused in Nagasaki shortly after moving to Japan in order to avoid Hague Convention proceedings, it's also in Italy's best interest to have the issue resolved before it's too late. The same goes for the other cases that each one of the G7 countries has pending with Japan. Yes, every G7 country has abduction cases that are going unresolved, and Japan stands in the way of these children being reunified with their parents. Kidnapping should not be a protected societal value!

Five days prior to April 23rd ordered return date, VP Pence visits Japan April 18 and 19. He will meet his counterpart, Japanese Deputy Prime Minister, Taro Aso. VP Pence will surely meet Prime Minister Shinzo Abe and Minister of Foreign Affairs Fumio Kishida as well.

*** I hereby respectfully request that Vice President Mike Pence speak with these Japanese officials and ask them to have Japan meet their international obligation to comply with the Hague Convention, and return our children to their habitual residence in Minnesota. Excuses may be offered why they cannot, but I know from 30 years of involvement with Japan, Japan will force their return if required or given no opportunity to avoid.

The following day, April 20, Italian Prime Minister Paolo Gentiloni will meet with President Donald Trump in Washington D.C. The significance of this is also related to the upcoming G7 Summit. The host country has determining influence in setting the agenda of the G7 Summit, and considering that "Citizen safety" is the number 1 topic among the official priorities set by Italy for the G7 Summit with a target area of managing human mobility, we would like to officially request to have the child abductions in Japan discussion included in the agenda.

*** I hereby respectfully request that President Donald Trump and Prime Minister Paolo Gentiloni talk about Japan's noncompliance with Hague Convention and resolve to put the issue on the G7 agenda. Japan's continuing failure to comply with international standards puts children in all G7 member states at risk of being abducted with no feasible means of recovery. Japan remains an ongoing international threat to our children and their human rights. They are by all means victims of the outdated legal system. It is an opportunity for President Trump to demonstrate 'America First' by demanding Japan respects a properly rendered decision and return order from a U.S. court.

There is no viable legal means at present to recover children through the Hague Convention if the taking parent in Japan refuses to cooperate with court orders, as I know well, and there are no consequences in Japan for contempt. Our children remain with Hitomi Arimitsu, in contempt of courts in both countries, aided and abetted by Mr. Yukinori Arimitsu of Arimitsu Industry Co Ltd of Osaka, Japan. I wonder if anyone in Japan has influence over Mr. Arimitsu to persuade him to end this conflict between Japan and U.S.? Why would he want to put the country of Japan in jeopardy any longer?

Hitomi Arimitsu owes me approximately \$95,000 in unpaid legal expenses and fines that have accrued since the time they were imposed by the Japanese legal system. The money remains uncollected owing to Japan's dysfunctional legal system. I wonder how any foreign party or government can feel their legal rights will be protected in Japan? There exists ample evidence of a dysfunctional judiciary generating capricious rulings based upon pragmatism of situations, not principle of existing law.

There are good people and groups in Japan pushing for children's rights and Hague compliance. For example, Japanese Diet Representative Kenta Matsunami, on March 8th, repeatedly asked Japanese Minister of Justice Katsutoshi Kaneda whether he agreed with the interpretation of the revised Japanese civil code article 766 given by his predecessor Satsuki Eda. At the time of those deliberations in the Judicial Affairs committee, Mr. Eda stated that Article 766's meaning was to disqualify an abducting parent from custody preference. After a long-winded evasion of the question, and repeated questioning by Mr. Matsunami, Mr. Kaneda was finally brought to respond in the affirmative, in English, saying "yes." Likewise, Director General of Japan Supreme Court Family Division, the Honorable Hitoshi Murata acknowledged the statement of his predecessor at the time in 2011 when the revision of article 766 was being deliberated that the best interests of the child should be considered, and this has not changed since.

The revised article 766 was designed to prevent abducting parents from retaining custody of their abducted children or gaining an advantage in court. Article 766 took effect five years ago, and has been ignored by an unaccountable rogue judiciary mired in tradition, since.

On the same day the Hague Convention went into effect in Japan, April 1, 2014, the current Chief Justice of the Japanese Supreme Court, Itsuro Terada, assumed office as well. He issued a statement that in translation reads

"It becomes common for the courts to deal with cases which have to be considered domestic matters and international matters as the Hague Convention having come into effect today. So, I believe that we judges are asked to make sustained effort to meet the expectation and trust of the people in us and to tackle these matters by studying the real state of affairs happening in Japan and the international trend in order to strengthen the function of judicial branch."

Shouldn't Japanese courts be following both the principle of the revised civil code article 766, their domestic law, and the principle of Hague Convention, their international obligation? In actuality, both legal standards are in abeyance in Japan. Japan's courts are not even functional for Japanese.

A case in point involves Mr. Yasuyuki Watanabe. Mr. Watanabe has battled in court many years to see his child. In an unprecedented decision, Matsudo, Chiba Family Court awarded Mr. Watanabe, a father, custody of their child, taking it away from the mother. This decision was appealed to the High Court and on January 26th of this year the high court overturned the previous decision in Matsudo. The high court ruling explicitly cited the old, discarded legal standard-- the continuity principle. A principle that rewarded the abducting parent with custody in order to not upset the child. The court ignored the 5-year-old article 766, the current law. Mr. Watanabe is appealing this errant ruling to Supreme Court in Japan. Please note: joint

custody is not a legal option in Japan, only sole custody. It's a zero sum game in which the child is guaranteed to lose every time.

This abduction appears to have been well organized and well planned. We can see there is such activity by groups in Japan as described in the Liberal Time article about Shelter Net. I believe these groups and their followers in Japan's judiciary were responsible for the noncompliant ruling of February 17th. With more international pressure on Japan, groups such as these will be exposed and brought out from the shadows.

Now, I am required to go to the US Consulate in Osaka for a second time to wait for our children to be released to me on April 23rd. Will the requests by Vice President Mike Pence make a difference? Will Prime Minister Shinzo Abe, Foreign Minister Fumio Kishida, and Minister of Justice Katsutoshi Kaneda respond in kind and facilitate the return of our children?

I urge the Bureau of Consular Affairs in its annual Hague Compliance report due by law on April 30th to reflect the failure to enforce Hague return orders once again in the Japan Country report. Moreover, I urge the report to finally categorize Japan as a non-compliant country. Then, as indicated in the Goldman Act, Secretary of State Rex Tillerson ought to use his discretion to implement the most pernicious executive actions available to him by law, and specifically, extradition of our children and Hitomi Arimitsu to USA to appear in Minnesota court, as repeatedly ordered. Sec. Tillerson possesses the character and stature to resolve this issue.

At a forum of the international community in which Japan takes part, this issue must be addressed at the G7 Summit in Italy. Other G7 members must demand immediate changes to Japan's dysfunctional legal system and laws in order for Japan to be considered worthy of continued membership. It used to be G8 and it may be time for it to become G6.

In closing, I am here alone, but my voice represents not only my children and I, but hundreds of thousands of children, Japanese and foreign, that every year lose access to one parent in Japan.

Japan has been complicit in the ongoing retention of our children and failure to enforce several court orders. Parental abduction is a penal crime in most advanced countries in the world, but it is not in Japan. Japan cannot be trusted moving forward to voluntarily take the steps necessary to effect functional enforcement of court orders of any kind, specifically Hague.

The tools exist in U.S. Code to motivate Japan to comply. It's not a matter of ambiguity. The bright line has been blurred to suit other's interest, not the U.S., in the past. The Goldman Act provides a process and consequences in these situations. Within the Goldman Act there are myriad of consequences to choose. The power to choose and impose these sanctions resides in one office, one official, one individual. Sec. of State Rex Tillerson.

Thank you again for this opportunity to speak before this committee and I have tried to keep my testimony brief because I understand committee members have family, and perhaps even children, they expect will be there when they return home.