

**TESTIMONY  
OF  
PATRICIA E APY**

**BEFORE THE  
SUBCOMMITTEE ON AFRICA  
GLOBAL HEALTH, GLOBAL HUMAN RIGHTS AND  
INTERNATIONAL ORGANIZATIONS**

**UNITED STATES HOUSE OF REPRESENTATIVES**

**HEARING  
ON**

**No Abducted Child Left Behind: An Update on the Goldman Act**

**Chairman Hon. Christopher H. Smith (NJ)** ; Ranking Member Hon. Karen Bass (CA) and distinguished Members of the Committee, a number of which before whom I have previously had the privilege of offering testimony as you continue to confront the enormous task of preventing International Parental Abduction:

My name is Patricia Apy. As reflected in the information outlining my professional experience, much of the last three decades I have concentrated my practice primarily on international child custody litigation, with particular attention to cases of the wrongful removal and retention of children who have been removed or retained to countries which either are not compliant with the Treaty obligations found in the Hague Convention on International Child Abduction, or have not ratified the Treaty. I had the privilege of working closely with those drafting the Sean and David Goldman International Parental Kidnapping Prevention and Return Act of 2014. I have, since August of 2014 worked closely with the application of the law, and have written and spoken extensively regarding the practical preventative measures initiated by the Act. I append to my remarks, “The Case for Reciprocity, Significance of the International Child Abduction Prevention and Recovery Act, in the Private Practice of International Family Law” New Jersey Lawyer October 2015, in which I provided a detailed evaluation of the legal and diplomatic components of the Act, and its impact upon the international practice of family law.

In addition to my continuing work in litigating the retrieval of children who have been wrongfully removed or retained world-wide, I have served as an expert witness throughout this country, assisting Judges and lawyers in evaluating and implementing requests for preventative measures in family law cases. It is that perspective that I hope to share in my brief remarks.

Today I wish to focus on:

- A review of how the ICAPRA, and its reporting requirements are being used throughout the United States.
- The importance of the reporting requirements of ICAPRA to the prevention of parental abduction; why accuracy and transparency are crucial ;
- Why it is essential to accurately and unapologetically identify all non-conforming states , identifying the obstacles to recovery of children wrongfully removed or retained there;
- Point out the importance of identifying precisely what steps are being taken to address any systemic difficulties that the Office of Children's Issues is encountering with any particular country;
- Advocate that the Department of State be required (as provided for in the express language of the Act) to identify the steps that have been taken to ameliorate identified obstacles to recovery and to move beyond mere *demarche* and use affirmative tools of MOUs coupled with specific diplomatic actions to influence the actions of other countries, particularly those identified as non-conforming.

To illustrate the issues I am prepared to discuss Japan, which has not demonstrated treaty compliance, yet has not been identified as a non-conforming state. To remind the committee, I have, for years, been representing Michael Elias, a prior witness to this Sub-committee, in a pro-bono capacity in response to the request of the former Commandant of the United States Marine Corps, General Conway. This battle wounded marine discovered his two children had been abducted by their mother to Japan. Mr. Elias' ex-wife worked for the Consulate of Japan in New York and with the help of Japanese consulate authorities in Chicago was able to obtain the replacement of the children's court ordered surrendered Japanese passports and abduct his children. The Japanese government not only failed to address the clearly criminal behavior of his wife, the complicity of the their consulate in Chicago but their duplicity in telling a member of this subcommittee, along with the grandparents of these children, that they were actively

investigating the criminal behavior, when in fact they had already determined that they had no intention of doing so. That information would be purposefully withheld for over a year from Mr. Elias. Mr. Elias, has not filed an application for assistance for the organization of rights of access, because there is no identified process, nor meaningful remedy in doing so.

The current status of the resolution of existing abduction cases, despite Japan's formal execution of the Hague Abduction Convention, remains particularly difficult and has a sinister impact upon the prevention of future abductions.

American Judges, if reading the ICAPRA report, may be led to believe that there is a legitimate process in place to provide the swift remedy of return of abducted children, or a identifiable process to organize rights of access for left behind parents. This is particularly important in that so many of the children, who were victims of abduction prior to Japan becoming a signator, were left only with the remedy of access petitions.

#### **Actions of OCI/ State Department Japan Desk:**

Prior to the enactment of the Treaty, parents who had pending abduction matters were sent, from time to time, "urgent" time-sensitive updates, repeatedly promising that the Hague ratification would enable them to at least secure access rights to their children. The promises were entirely illusory.

Additionally, left behind parents were encouraged that despite the ratification of the Treaty, the Office of Children's issues would "continue to raise the question of how Japan intends to resolve existing cases". While correspondence referred to "bi-lateral discussions", such discussions are hampered by the historic position of the Department of State against the use of Memoranda of Understanding or other bi-lateral agreements. No concrete steps have been

taken to address Japan's deficiency in its reciprocal obligations as provided for in ICAPRA. The lack of inclusion of Japan as a "non-conforming" state despite the failure to secure the return of children under the Treaty, sends a message that the fate of these abducted children are not of particular concern. Notably of the approximately 40 applications by left behind parents of abducted children, filed for organization of rights of access under Article 21, on the first day that applications were received by the Department of State, I am aware of no process in place to address such claims under Article 21 nor am I aware of any access in those cases being provided through a Hague process.

**Conclusion:**

MOUs, bilateral agreements and diplomatic sanctions must be seen as part of an arsenal available to the Department of State to address the unique legal and cultural framework of international family law. American families need to have accurate and transparent information regarding the objective obstacles to recovery of children, for both non-conforming and conforming states. This body, needs to know whether certain countries remain recalcitrant in their reciprocal treaty obligations and address accountability in order to protect American Children.

Thank you.

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