

James Cook II

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

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Subcommittee Hearing *Africa, Global Health, Global Human Rights, and International Organizations*

Thank you Chairman Smith and committee members for this opportunity to speak about Japan, Hague compliance, and my experience in the process.

This is my third time in three years before this committee speaking about these topics. Following is a brief summary of my Hague case and status as of today. My case is an excellent example of how Japan completely fails to be Hague compliant, is systemically incapable to comply, and likely never to comply absent outside force after 4 years of Hague participation.

I am James Cook, and since August 2014, I have been working to gain return of my four minor children abducted to Japan. In July 2014, my wife, Hitomi Arimitsu, took our four children to Japan to visit her family and refuses to return. Her father is Mr. Yukinori Arimitsu of Arimitsu Industry Co. Ltd of Osaka, Japan. Mr. Arimitsu has been harboring our children in contempt of Japan and U.S. court orders.

Several civil attempts were made in fall of 2014 to spring 2015 to gain return of our children. In August 2015, with the assistance of Department of State (DoS), I submitted an Application for Return under Hague. Both USA and Japan are signatories to Hague, and Japan began implementation of Hague on April 1, 2014. DoS and Japan Central Authority (JCA) accepted my application in early August 2015. The struggle to gain our children's return from Japan under Hague began.

In October 2015, Osaka Family Court (OFC) found the proper location for jurisdiction to determine custody was Hennepin County, Minnesota, habitual residence prior to abduction, and ordered return of our youngest twins, 7 years old at the time. OFC considered the opinion of our oldest twins, 12 years old, and used the court's discretion and denied their return. This is an example that children are viewed as property, not people, with this Solomon-like division.

Both Hitomi and I appealed the OFC ruling in November 2015. Osaka High Court (OHC) affirmed OFC's jurisdictional determination (USA, not Japan) and ordered immediate return of all **four** children to USA (habitual residence) in a January 2016 order. Hitomi appealed this order to Supreme Court in Japan in February 2016 and was denied standing almost immediately. The order was final and enforceable at that moment. *Japan's legal authority shifted to enforcement of order and compliance with Hague from that point.*

Hennepin County Family Court took up this matter as part of an active dissolution case and accepted jurisdiction in comity with OHC. Hennepin County court legally substantiated jurisdiction independent of OHC ruling of January 2016. Both USA and Japan are signatories of Hague Convention on Child Abduction. As signatories of Hague, we agree to respect and

uphold court decisions made in other signatory states. There is specific language in Hague addressing comity of signatory court's rulings.

Numerous enforcement attempts have been made in Japan, using all legal means of enforcement, starting in February 2016 through September 2016. All attempts were unsuccessful. At the heart of Japan's enforcement articles for Hague is required voluntary compliance from abductor for enforcement. When an abductor says "no", enforcement ends. In contrast, if I were to go see our children in Japan without her permission, I risk arrest and being held for 23 days in jail BEFORE any charges need to be filed. After which, I could be denied entry into Japan in the future. This is just one example of systemic deterrence against left-behind parents attempting to have a relationship with their abducted children or effectuate foreign court-ordered returns.

Hennepin County Court exercised their jurisdictional authority and ordered Hitomi Arimitsu in separate orders of December 2nd and December 13<sup>th</sup>, 2016 to surrender our children to me on December 17, 2016 at U.S. Consulate in Osaka, Japan. I was present at Consulate on December 17th in compliance with the order. Hitomi did not show or communicate her intended contempt. I left Japan for the fourth time in a year without any contact with our children. I have not seen our children in person since October 2014 when I travelled to Japan to meet them at Tokyo Disneyland. All communication ceased in late August 2015, one week prior to our first Hague hearing in Osaka, Japan.

Hitomi petitioned OHC in January 2017 to modify the return order citing my dissipated financial assets during the preceding year and claimed I could not support children if returned. These types of considerations are specifically addressed in Hague as examples **NOT** to be considered and not sufficient to deny return. Nonetheless, in February 2017 OHC revoked their previous return order of January 2016. We received permission to appeal to Japanese Supreme Court (JSC) and JSC received our arguments on May 10, 2017.

Hitomi was again ordered by Hennepin County, the only court on the planet with jurisdiction over our children, on March 24, 2017 to surrender our children's passports by April 7th and release children to me at U.S. Consulate on April 23rd. She refused to surrender passports that are property of U.S. DoS. I was present in U.S. Consulate in Osaka on April 23rd and Hitomi did not comply with any part of March 24th order. I left Japan, once again, unable to see or communicate with our children.

On December 21, 2017, Japan's Supreme Court ruled that OHC's revocation was legal and affirmed. Our children are no longer ordered to be returned to USA. With this decision all my legal avenues in Japan have ended and my Hague case is concluded.

Two weeks ago, OHC cancelled all enforcement orders and financial penalties due me. Hitomi has achieved the perfect consequence-free abduction with the aid of Japan's systemic non-compliance and DoS's inaction.

After over 2.5 years in this process I have nothing. This process has cost me everything.

DoS Office of Children's Issues (OCI) has recommended I file a petition for access under Hague. If my two previous return orders were not enforceable, any order for access will be

equally unenforceable. DoS OCI has little value to any LBP of children in Japan until or unless the JSC ruling of December 21, 2017 is revoked or vacated.

**Japan re-litigated our Hague case as a successful ploy to avoid compliance and DoS is complicit in the failure.**

Japan signed The Hague under great pressure and domestic opposition. To assuage opponents in Japan, implementing legislation was written allowing broad interpretations of Hague language, counter to Hague's specific intent of narrow interpretations, and only civil enforcement powers, not criminal. No one will be arrested, detained, or criminally prosecuted for contempt of court-ordered return. Parental child abduction is NOT a crime in Japan. In fact, it's a court-condoned practice.

Hitomi was allowed to file an appeal for modification of return order a year after the 2<sup>nd</sup> return order due to a 'change in circumstance'. Her petition for modification was based upon factors outside of, and specifically excluded from consideration, according to language in The Hague. These considerations were financial, living arrangements, whether Hitomi could come live in USA, whether I would receive support from my estranged father, education opportunities, and in general, "best interest". It is clearly stated in The Hague that "best interest" considerations are ONLY to be decided by court of habitual residence, after return. At no time, has habitual residence, Minnesota, USA, been in dispute or reversed. Hitomi's appeal was on erroneous grounds using erroneous evidence. It was a junk lawsuit that should have been dismissed as such.

*Article 19 (Hague)*

*A decision under this Convention concerning the return of the child shall not be taken to be a determination on the merits of any custody issue.*

OHC's acceptance of her appeal was a clear sign that Japan's judiciary is incapable to handle Hague cases. The three judges of Osaka High Court, 9th Civil Division; Presiding Judge Toru Matsuda, Judge Yoshinori Tanaka, Judge Takahiro Hiwada were ignorant of The Hague's most basic elements.

OHC's February 17, 2017 revocation reasoning, and JSC reasoning, violates the language and intent of Hague, and therefore non-compliant, in the following ways:

1) "**Grave risk' was never supposed to include lifestyle.** OHC used my depleted financial circumstances as an 'intolerable situation' (grave risk) to not return our children. Extensive Hague case law contradicts OHC's reasoning, including language in The Hague itself. The courts ignored over \$84,000.00 Hitomi owed me, at that time, in contempt fines ordered by OHC. Ultimately, the amount reached over \$ 132,000.00. The grave risk or intolerable situation was to Hitomi's family's fortune, not to our children!

2) **Objection of 12-year olds as valid.** Our children were alienated from me for a year prior to this interview and unable to make an accurate opinion. 12-year-old children lack the brain development to make reasoned decisions and still are mostly emotion driven. They are not old enough to understand how the ramifications of their opinions expressed in their Hague case

will cause life-long effects on themselves and younger siblings. Extensive Hague case law contradicts OHC's reasoning. In essence, OHC ignored voluminous precedent to make up this reason.

3) ***Not expeditious proceedings.*** The long drawn out legal and enforcement process is in direct violation of timeliness within the Convention. This one violation is grounds to dismiss OHC revocation and JSC rulings. Japan's implementation laws allow for appeals for modification until children are returned. In essence, the Japanese abductor can hold the child indefinitely to a point where temporary circumstances of LBP change to allow modification.

4) ***No access to children during process.*** Ability to maintain relationship with my children was destroyed. Japan's enforcement laws require the abductor's permission to access child(ren). Under Hague, I am guaranteed access and Japan was non-compliant. Japan is not capable to participate in The Hague.

5) ***No enforcement powers.*** This added to the delay and ultimately the circumstances for modification and revocation. At every enforcement opportunity, abductor's permission is required to proceed. The thief's permission is required for access to stolen lucre. Law enforcement's powers extend to asking the child to come with them voluntarily. Child cannot be physically touched or moved by law enforcement or left-behind parent (LBP). Japan lacks enforcement powers to participate in The Hague.

6) ***Violates 'furtherance of Convention' standard.*** It rewards and encourages further abductions, not discourages. The broad reading, implementation, and ineffective enforcement of The Hague language violates The Hague and is prima facie evidence of non-compliance. Even the most foundational element of The Hague is not followed by Japan.

DoS was provided frequent updates regarding my case progress and my legal concerns the non-compliant way Japan was allowing my case to progress. DoS did nothing to intervene or protest the non-compliant path Japan was pursuing. When JSC ruled and ended my case, DoS said they had sympathy for me and my children while saying there was nothing they could do. There was plenty they could have done under Goldman Act, yet they did nothing. There is plenty they can still do to force my children's return, as ordered twice under Hague proceedings in Japan. DoS is complicit with my children's continued abduction. I am left to wonder if there are grounds for an investigation into conspiracy with JCA to fail.

### **Japan is not compliant with Hague by any objective measure.**

In the last three Goldman Act reports, Japan has avoided being designated 'non-compliant' as a result of significant manipulations from Japan and within DoS. It is my hope that this year's report will be accurate and show Japan to be 'non-compliant'.

Please do not be fooled by informational misdirection and shading of Japan's record from DoS. To this day, there has yet to be one U.S. child returned to a U.S. parent as a result of Japan's enforcement of Hague. Children that have been returned (3) to U.S. parents are the result of negotiated settlements, parental death, and factors outside of Japan's Hague laws. Over 50% of all children returned (4) have been to one Japanese parent living in Oregon. U.S. parents do not get their children back if the Japanese parent refuses to return. The irony of my case, with

4 U.S. children, is that it would make Japan compliant, no question. A recent ruling in JSC regarding the 'extreme illegality' of habeas corpus contempt - "extreme illegality" is the legal standard in Japan, not just illegal - has given a Japanese parent residing in USA a chance at another Hague return. This would be 5 of 8 children returned to USA under Hague to Japanese parents. To rephrase in metrics used by DoS, nearly 2/3<sup>rd</sup>s of returned children have been from Japanese parents in Japan to Japanese parents living in USA. The Hague appears to be an international extension of Japanese family law. I guess The Hague is working well enough for Japan, but not for American children.

DoS has allowed the errant Japan Supreme Court ruling of December 21, 2017 to stand, unchallenged, and as such, has provided a legal basis for all future return failures of U.S. children to U.S. parents. OCI has little value with respect to Japan abductions until or unless DoS will object to JSC ruling and demand our children's return. No U.S. child can ever be made to return from Japan with December 21, 2017 order being allowed to stand. Unless, of course, the parent in USA is Japanese.

This article describes the legal errors of the JSC ruling with links to several references: <http://conflictoflaws.net/2018/japanese-supreme-court-renders-decision-on-hague-abduction-convention/>

Colin P.A. Jones has written several times about my case: <https://www.japantimes.co.jp/community/2017/12/31/issues/japans-supreme-court-hands-road-map-parental-child-abductions/#.Wki8tTT8lBM>

A well-written article by Brian Prager on his blog dedicated to his son who was abducted to Japan in 2010. <https://forruiboy.com/read-for-rui-boy/>

### **Japan's court system is corrupt and must not be respected by U.S.A.**

A common assumption many make about most advanced countries is that our legal systems operate the same and adhere to similar legal standards. It is recognized that certain legal specialties must be compensated differently than others. For example, family law attorneys in USA are forbidden to receive compensation linked to success of a case, whereas, personal injury (tort) attorneys receive compensation linked to success. In Japan, family law attorneys are paid 'success fees' AND can receive a percentage of settlements and monthly maintenance payments. The incentive to manipulate and complicate the process is obvious.

A large piece of the family court (divorce) system is the \$1 billion budget for domestic violence shelters in Japan. A billion dollar enterprise cannot exist without robust systems and supports. Family law system in Japan has all of those elements. Following is an example of a domestic divorce process with background.

*Tomoko wants to divorce her husband Niro and take the child with her, and away from him. Tomokoi, like most Japanese mothers, believe children are her unique property since they are her primary responsibility. Wondering what to do, she searches internet and finds numerous blogs that provide her step-by-step instructions how to proceed successfully. These blogs appear to be written by sympathetic individuals, but are actually an extension of organizations that exist to bring in new supply for this billion-dollar enterprise.*

Tomoko's first step is to find a proper lawyer (bengoshi) that specializes in this type of case. One of the blogs directs Tomoko to a group like Federation of Lawyers of Japan whose members include: Yoko Yoshida, Yoriko Nishimura, and Takayo Kamata.

Yoko Yoshida is the Vice Chairperson of the "Committee on Gender Equality," an organ of the Federation of Lawyers of Japan. As described in "News from the Federation of Lawyers of Japan/ News from Gender Equality" she opposes Japan's ratification of the Hague Convention. The websites below explain that most of the attorneys who advise and help child abduction are communists (members of Japan Communist Party).

It is true to say that because their activities are only taken up by the party's homepage or Red Flag (赤旗), which is the official newspaper of the Japan Communist Party.

[https://blogs.yahoo.co.jp/nb\\_ichii/36450440.html](https://blogs.yahoo.co.jp/nb_ichii/36450440.html)

(These articles are in Japanese and can be translated well enough via Google Translate)

About Sankei article: <http://oyako-law.org/swfu/d/20171013sankei.pdf>

About Takayo Kamata and her communist activities:

<http://jcp-matsukama.main.jp/index.php?FrontPage20160207>

<http://jcp-chiba.web5.jp/nissi1207/dekigoto1406/dekigoto140812.html>

About Yoko Yoshida and her communist activities

[http://www.jcp.or.jp/akahata/aiki13/2013-06-13/2013061304\\_02\\_1.html](http://www.jcp.or.jp/akahata/aiki13/2013-06-13/2013061304_02_1.html)

About Nikkei article

[https://www.nikkei.com/news/print-article/?R\\_FLG=0&bf=0&ng=DGKKZO13453130Y7A220CiCCi000](https://www.nikkei.com/news/print-article/?R_FLG=0&bf=0&ng=DGKKZO13453130Y7A220CiCCi000)

About Yoriko Nishimura and her communist activities

<http://jcp-ishikawa.jp/genpatsu/2015-08/3548.html>

Tomoko's second step, according to these types of organizations, involves reporting a DV claim to police and checking herself and child into a governmentally funded DV shelter in her area. This network of DV shelters (ShelterNet) receive payments from the government based upon number of individuals served, so Miki represents a revenue source to the shelter operator. Tomoko has officially entered the billion-dollar enterprise as an input, and she's already making the enterprise money. At the shelter, her case will be examined to determine the amount of money that can be made off of her. In the meantime, Tomoko will be provided a place to stay and a minimal amount of monthly money, approximately \$ 1,000.00. Niro comes home to an empty house and must learn to live alone, in silence.

If her attorney determines Tomoko has money and decides to take her case, Tomoko (and 'her' child) will enter into a process that takes months before it will come to a hearing. Shige continues to live in silence this whole time and at some point will receive notice of Tomoko's intention to divorce and take child. Niro will seek out an attorney that may or may not be complicit with the enterprise and his eventual loss. Niro only represents the revenue source for the enterprise and has no value beyond that.

*Once there is a hearing, the judge will be looking for evidence supporting his predetermined decision (Tomoko gets sole custody of child and Niro must pay to see the child 1-2 hours per month). Japan does not have legal joint custody, only sole custody. In essence, legally sanctioned abduction. The key piece of evidence the judge seeks is where and with whom the child is currently living. Using the long-held legal tradition of “continuity principle”, judge decides to order the child to remain with whomever abducted and currently possesses the child.*

*“Continuity Principle” describes the rationale ‘to avoid further trauma to the child it’s best to leave the child’ with the parent that took the child many months ago. Although common, this practice is specifically FORBIDDEN in Japanese legal Code 766, passed in 2012. Judges still use this rationale couched in other language to continue the same old ways, 100% opposed to codified law. It’s expected that criminals break the law, but it’s hard to believe judges take the lead in unlawfulness!*

Videos of Japanese Diet sessions (English subtitles) Diet member Matsunami questioning Minister of Justice Kaneda and discussing 766, continuity principle, and my case:

February 2017

Japanese Diet member Matsunami asking former Minister of Justice Kaneda about interpretation of article 766. There were several long, evasive responses by Minister Kaneda. This is extremely revealing. Finally, when pressed to respond “yes or no” in English, he admitted reluctantly that yes, he agreed with the interpretation and intent of the revision of 766, which is against the abduction of children. (13:17 – 17:26 min English subtitles)

[https://www.youtube.com/watch?v=l\\_X0uK-laBk](https://www.youtube.com/watch?v=l_X0uK-laBk)

March 2017

Diet member Matsunami asking Minister of Justice Kaneda and others questions about the international problem of the Hague implementation in Japan. (English subtitles.)

[https://www.youtube.com/watch?v=l\\_XouK-laBk](https://www.youtube.com/watch?v=l_XouK-laBk)

April 2017

This commentary in the Diet April 2017 by former Diet member Matsunami about asking former Minister of Justice Kaneda about the interpretation of 766 and mentioning my name in the process is quite revealing. He insists that it is important to agree on the interpretation and purpose of the revision of 766 in order to build mutual trust with other countries. He also asks about the continuity principle. (starting at 9:34 – 15:45 min English subtitles)

<https://www.youtube.com/watch?v=ZAputy7wpq4>

*Tomoko, unsurprisingly, ‘wins’ the right to keep their child away from its’ father indefinitely. Although the court may have ordered Niro access, usually supervised in a court space or meeting room for 1-2 hours per month that he must pay the court for use of their room, Japanese law has no consequences for Tomoko to be in contempt of this meager requirement.*

*With that, Niro’s child loses a parent, indefinitely. If Niro continues to pay his monthly support, from which Tomoko’s attorney gets a percentage, Niro may be allowed to see his child. Typically, the child is alienated enough in the intervening time that the child learns to hate and ‘erase’ the other parent.*

*It’s a myth that alienated children will seek out their other parent later on. This myth is perpetuated by other people to quell the sickening feeling that arises upon hearing and briefly imagining themselves in the same situation. For many of these children, the loss of the other parent is absolute.*

How can all of this happen?

1. Communist Party affiliated lawyers and judges control the legal system. There is evidence of collusion between these communist lawyers and judges.
2. ShelterNet has a financial incentive to recruit customers. Fertile grounds for corruption with an incentive to collude with lawyers and judges.
3. Judiciary practicing outdated law without consequence. No oversight.
4. Parental child abduction is not a crime in Japan, and therefore, enforcement is ineffectual.
5. Current system perpetuated by 1) - 3).

### **Japan must be held accountable.**

Diplomacy on this issue with Japan has not been successful for decades. Hundreds of children have been lost to U.S. parents in this time. Children are not bargaining chips or pawns because their rights are non-negotiable. Japan's movement on this issue has only come as the result of coordinated, extreme pressure. Parental child abduction to Japan affects nearly every country, so coordinated, international efforts must be pursued. U.S. DoS holds a powerful position in the world and must lead these coalitions and efforts. For reasons outlined above, including the illegal JSC Hague ruling, Japan's corrupt judiciary, and Japan's unrepentant abduction practices, I recommend the following actions be taken:

1. Placement of indefinite tariffs upon strategic Japanese imports until the following occur:
  - a. Revocation and invalidation of OHC's February 2017 and JSC's December 2017 rulings as non-compliant.
    - i. Immediate return of my four children without delay or condition. No further court actions; it's been nearly 3 years already.
    - ii. Reinstatement of all enforcement fines and penalties due me. (approx. \$ 132,000.00)
  - b. Criminalization of parental child abduction to Japan.
  - c. Criminalization of denial of access to pre-Hague abducted children.
  - d. Creation of a quick legal path to criminalization and prosecution of contempt of Hague return orders that include forcible arrest of abductor, harboring individuals, and physical removal of children by law enforcement or LBP.
  - e. Recognition & enforcement of all previous and future U.S. court custody and return orders.
  - f. Extradition of U.S. court-ordered persons by any means including arrest, physical force, and arraignment of harboring individuals.
  - g. Payment of all U.S. court-ordered contempt penalties by Japanese government directly to LBP within 30 days of order.
2. U.S. legislation or addendum of Goldman Act that:
  - a. makes U.S. DoS responsible for payment of all costs, fines, and penalties awarded to U.S. citizens during the course of Hague proceedings. DoS can arrange to collect the penalties from signatory countries after U.S. citizen has been paid. The costs of prosecuting Hague cases is onerous for citizens, and DoS needs to have 'skin in the game'.
  - b. allows U.S. LBP to sue DoS for failure to act or utilize Goldman Act tools in



pursuit of an abducted child's return.

- c. Allows DoS review and challenge of all non-return Hague decisions with use of full Goldman Act tools in the event agreement is not reached within 90 days from challenge.
3. DoS to issue indefinite travel alert and caution to parents traveling to Japan with minor children of Japanese descent due to extreme abduction risk and Japan's history of non-compliance. This alert can be rescinded at some point when Japan shows two years of perfect Hague compliance.
4. DoS must endorse the U.S. parent's consent for a Japanese passport issuance to a minor child. This endorsement remains the property of DoS and can be rescinded at any point to invalidate dual citizenship of a minor child, at which point, minor child then becomes only a U.S. citizen for purposes of treaties, jurisdiction, and abduction.
5. For countries outside of USA that have been affected, such as Canada and EU, I recommend adoption of similar legislation and economic policies. The more unified our efforts, the greater our impact for quick, permanent change for all.

Japan has ignored demarches and similar toothless efforts for years. Japan, at its core, is an economic nation that relies on asymmetric trade. Effective strategies will use tactics that affect trade, not diplomatic talk. Additionally, Japan enjoys a mythical regard by many in the world. Dedicated efforts to disabuse the world of this mythology and inform regarding the reality of Japan will move this issue further along.

How many advanced societies are aware of Japan's archaic family laws? We must educate the world how the rights of parents and children are disregarded in Japan.

How many of these societies are aware of rampant racism within Japan and nearly pathological nationalism? Our bi-racial children are outcasts in Japan and considered 'less than' by society. In all matters, Japan is primary and facts, rights, and reality are secondary. Japan's exceptionalism must not be condoned.

How many are aware of the significant humanitarian effort imbalance between Japan and the rest of the world? Japan is a significant net 'taker' from other countries of the world while pushing a facade of contribution. The rareness of these contributions makes them stand out.

In closing, the last four years, nearly equal to Japan's Hague participation, have been a form of misery only a few can understand. I have spent everything I have, lost my children, and been abandoned by my government.

- I ask this committee and fellow lawmakers in the Legislative branch to make laws as I have outlined above.
- I ask the Judicial branch to heed my testimony when contemplating joint custody arrangements between U.S. and Japanese parents, and certainly any considerations of allowed travel out of USA. There is no such thing as a harmless vacation to Japan.

- I ask the Executive branch, and specifically President Trump, to make the call, write the Executive Order, or take the action that returns my children immediately.
- Mr. President, when you meet with PM Abe next week, demand my children back. There is nothing to study. There is nothing complex – both common put-offs from Japanese. My children were taken, ordered returned twice, and through Japan's unwillingness to honor their Hague commitments, held in Japan until a legal reason could be crafted to justify them staying.

There are several organizations working and supporting left-behind parents to reunite with their children. These organizations include: iStand Parents, BACHome, and Kizuna Child-Parent Reunion in Japan. Various unaffiliated individuals have helped behind the scenes in both USA and Japan. I am grateful for these organizations who work on the issue and on my behalf. I am grateful to the various Mr. and Ms. X's that help from the shadows. The risks to their livelihoods in Japan are great, yet they help. 非常に感謝しています.

As a final comment, I was recently contacted by a father now living in Japan, but not with his wife and children. His wife abandoned their home and life in USA in January of this year and took their children to Japan. When he asked his wife why she did this suddenly, her reply referenced my case and JSC's December 21 2017 ruling, when she said, 'because I knew I could keep them in Japan forever now.'

Thank you again Chairman Smith, and I am forever grateful for your years of work, these opportunities to speak, and most of all, I thank you for caring when few have.