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IMPROVING IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

HEARING

BEFORE THE

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS

OF THE

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HOUSE OF REPRESENTATIVES

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IMPROVING IMPLEMENTATION OF THE HAGUE CONVENTION ON THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

THURSDAY, JULY 28, 2011

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH,
AND HUMAN RIGHTS
COMMITTEE ON FOREIGN AFFAIRS,
Washington, DC.

The subcommittee met, pursuant to notice, at 3 o'clock p.m., in room 2172, Rayburn House Office Building, Hon. Christopher H. Smith (chairman of the subcommittee) presiding.

Mr. SMITH. The subcommittee will come to order, and good afternoon. First of all, let me apologize to our very distinguished witnesses and to all of you. We had eight votes in succession, and they began exactly at 2:00, so I apologize for that.

I want to thank you for joining us this afternoon for this second hearing in our series focusing on the deeply disturbing and seemingly intractable problem of international child abduction, which occurs when one parent unlawfully moves a child from his or her country of residence, often for the purpose of denying the other parent access to the child. I believe it to be a major global human rights abuse, a form of child abuse that seriously harms children, while inflicting excruciating emotional pain and suffering on left-behind parents and families.

On May 24th, at the first hearing in this series, this committee heard from six left-behind parents: One success story and five stories of deep and continuing agony and separation. Michael Elias, a combat-injured Iraq veteran from New Jersey told our subcommittee of his anguish after his ex-wife, Mayumi Nakamura, used her Japanese consulate connections to abduct little Jade and Michael, Jr., after the New Jersey court had ordered surrender of passports and joint custody. Ms. Nakamura flagrantly disregarded those valid court orders, telling Michael Elias, "My country, Japan, will protect me"; and of course she was right. Although Japan is reportedly prosecuting her for abusing her consulate connections, they will not return the children.

Michael Elias told us that "As a father who no longer has his children to hold in his arms, I cannot deal with this sorrow, so I try my best to stay strong and keep fighting for their return. All my hopes," he went on to say, "and dreams for their future now lie in the hands of others." He continued, "I am begging our Govern-

ment to help not only my family but hundreds of others who are heartbroken as well to demand the return of our American children who are being held in Japan."

We then heard from Joshua Izzard, who explained to us that his only child, 2-year-old Melisande, was torn away from him and everyone and everything she had known from birth in one cruel, selfish moment and abruptly plunged into a strange world of darkness, mental illness, and danger in Russia. His daughter, an American citizen, was taken out of the country using temporary travel papers supplied by the Russian Embassy. He told this committee that "Our great country must stop this constant bleeding of its most important resource, its citizens." As a Nation, we need to put in place effective, preventive mechanisms to ensure that our citizens are not subjected to the daily unbearable sorrow that comes in the wake of an international parental kidnapping.

We then heard from Carlos Bermudez, who has been battling for custody of his son, Sage, in the Mexican courts for 3 years, facing every delay tactic in the book. He expressed his frustration with the courts, but, with all due respect, also with the Office of Children's Issues, which from his experience was like dealing with "the DMV." He explained that when he requested government records of his son's entry and exit from the United States, OCI told him that it didn't have the information and asking them for it was like asking a plumber to fix his electrical. He told them that he felt it was more like asking a general contractor to work with the plumber and asked for their help to interface with other U.S. Government agencies that would only tell him to work with OCI. Other parents at the hearing and since have echoed his frustration with OCI.

Colin Bower, whose two young sons, Noor and Ramsay, were abducted by his wife to Egypt 2 years ago with the assistance of the Egyptian Government after his wife lost custody because of her drug use and psychological problems, conveyed to this committee his frustration over the lack of priority abduction cases receive in foreign policy. He questioned why the United States was giving billions of dollars to Egypt in aid when Egypt was flagrantly violating valid U.S. court papers, preventing him from seeing his sons, and otherwise aiding and abetting a kidnapping.

I would note parenthetically on Friday I chaired a hearing in the Helsinki Commission on an ever-worsening problem that has not been focused upon the way it should be, and that is the abduction of Coptic girls who are then forced to become Muslims and then are forced into marriage, usually on or after their 18th birthday.

Dr. Michele Clark, who is a leading expert on human trafficking, told us that there are thousands of these cases every year, and nary a whisper of discontent can be heard anywhere in the world about it. So we began to change that on Friday; and I do hope, while this panel will not address that, I did talk to Michael Posner earlier today, the Assistant Secretary for Democracy, Human Rights, and Labor, that this country and all countries need to speak out robustly on that horrific human rights abuse.

Sara Edwards told us—again getting back from the situation with Egypt—that her nightmare began 2 weeks—this is Turkey, I should say—2 weeks into her son Eli's vacation to Turkey with his

father. She allowed the vacation based on a shared parenting agreement she and her estranged husband had negotiated together but soon realized that her husband had used the agreement as a pretext for abduction.

Turkey allowed him to divorce Ms. Edwards and gave him full custody of the son without Sara Edwards being present or notified of the proceedings. Turkey, as we know, is a party to the Hague Convention, and Ms. Edwards has opened an application but faces the daily threat from her estranged husband that he will run with the child to Syria. So he dangles that over her head, that she will never see her son again.

She explained an experience that is much like that of many other parents, stating, and I quote, "The obstacles I face fighting the abduction of my son are great. I am essentially on my own to fight a court battle in a foreign country where I do not know the language or understand the culture."

Douglas Trombino, whose daughter Morgana was kidnapped to Colombia in November, testified and echoed the feelings of many left-behind parents when he said, "Families must remain families. The family unit is critical to the success and growth of a child." He went on to say, "I want to be Morgana's dad. I want to touch and smell her and love her and interact with her and just love my daughter. Not through a computer screen," he went on. "I don't want to blow bubbles to her via Skype, I don't want to send Easter baskets via FedEx, and I don't want to have to go through customs for a mere 24 hours of daddy-daughter time. That to me is not being a father. I want to be Morgana's dad, her hero, her go-to 24/7 best friend," he concluded.

Finally, we heard from David Goldman, who is here with us today, and he was the only parent who could tell of success. And although the Hague Convention requires return of children within 6 weeks, David's arduous struggle was 5½ years in the making. He told this committee that for years he "lived in a world of despondency and desperation with a searing pain throughout my entire being. Everywhere he turned he saw an image of his abducted child."

I would note that David Goldman never quit, just like the current group of left-behind parents who have drawn inspiration from David Goldman's success as well as his courage and his love, and I hope he provides a pathway for all of us on how we can replicate that success and bring American children home.

Indeed, the lessons learned from David Goldman's brave journey have been incorporated into H.R. 1940, the International Child Abduction Prevention and Return Act of 2011. Specifically, the bill calls to establish an Ambassador-at-Large wholly dedicated to international child abduction, not unlike what we have done with trafficking and very similar to what we have done with international religious freedom issues, to establish a robust and fully resourced office. People in the office are doing a good job. They don't have enough resources, I would argue, and enough people dedicated to do this work.

It would also prescribe a series of increasingly punitive actions and sanctions the President and the Department of State may impose on a nation that demonstrates "a pattern of noncooperation"

in resolving child abduction cases. Diplomatic overtures and admonishing words are simply not enough.

I would note we would also chronicle the misdeeds or positive deeds of countries that have not been Hague signers so that we can get a better sense as to what they are doing and not doing. So the pattern of noncooperation would apply equally to Hague and non-Hague countries alike.

Finally, in reading Assistant Secretary Kurt Campbell's testimony—and I deeply respect him, and I thank him for being here—I do remain concerned that, while expressing satisfaction that Japan may accede to the Hague Convention, the current 123 active cases involving 173 American children would not be covered by the treaty provisions.

Patricia Apy, who testified at our May 24th hearing and was David Goldman's attorney, has noted that Article 35 of the Convention provides, "This Convention shall apply as between contracting states only to wrongful removals or retentions after entry into force in those States."

So while I appreciate Secretary Campbell's obvious empathy and compassion for the children and the left-behind parents and I am encouraged that efforts will be made by State to "resolve existing child abduction cases and allow parents currently separated from their children to reestablish contact with them and ensure visitation rights," the exclusive emphasis seems to be only on "visitation and access" and not return.

To that end, I and many others urge the Obama administration to negotiate a memorandum of understanding or a bilateral agreement with the Japanese to ensure that the 123 left-behind parents and counting, because that number is likely to go up, perhaps significantly, before it is ratified, are not left behind a second time, this time by treaty promises and provisos that won't apply to them.

Last week, I offered an amendment to the State Department reauthorization bill, backed by my good friend and colleague, Mr. Payne, and really the entire committee—Howard Berman spoke very positively of it, as did Chairman Ileana Ros-Lehtinen—that expressed a sense of Congress that "the United States by way of memorandum of understanding with the Government of Japan and through all appropriate means should seek the immediate return of all United States children wrongfully removed to or retained in Japan."

Delay is denial, and it does exacerbate the abuse of a child and the agony of the left-behind parent. Because the Hague Convention again specifically precludes its protections to all existing abduction victims, entry into force sans an MOU will likely produce or result in lost momentum and no return of current abducted American children.

It is on behalf of left-behind parents and recognition of the extreme pain they suffer as victims and in recognition of our own duty as the U.S. Government that will bring these kids home that we hold this hearing today.

Again, I want to thank our distinguished witnesses for being here, which I will introduce momentarily, but I yield to Mr. Payne for any opening comments.

Mr. PAYNE. Thank you very much. Let me thank you for calling this very important hearing.

I would also like to thank our distinguished witnesses for agreeing to testify here today.

In May of this year, this subcommittee held a hearing entitled "International Child Abduction: Broken Laws and Bereaved Lives." During that hearing, we heard heart-rending stories from the parents of children who had been internationally abducted and who are still fighting for their safe return. This hearing follows up on the first by examining how we can improve the implementation of the Hague Convention on the civil aspect of international child abduction.

As you know, the Hague Convention is the principal mechanism by the United States and other countries to enforce the return of internationally abducted children. A treaty of this nature has become increasingly important with the rise of both international travel and bicultural marriages. There are currently 86 parties to the Hague Convention, and in 2008 60 of these nations were parties to 2,326 cases involving 3,179 children. The overall return rate of these was 46 percent, with 27 percent court ordered.

While the Hague Convention has served as an important tool in returning children to their legal guardians, there remains several areas in which the treaty inadequately or outright fails to protect the rights of parents. The most notable of these is the existence of nonsignatories to the treaty. These nations have made no commitment to respect the custody arrangements in other countries and therefore are unlikely to participate in the extradition of a child on those grounds.

Japan, as the only Group of Seven industrialized nation to not sign the treaty, has become the focus of international child abduction cases in recent years. The United States has the largest number of children abducted in denial of access disputes with Japan, with a total of 123 cases involving 173 disputed children. Congress has recognized this problem and passed H.R. Res. 1326, which called on Japan to join the Hague Convention and to return American children. Both Ranking Member Smith and I were co-sponsors of that resolution, as has already been indicated.

In May of this year, Japan announced that it would submit legislation to their Parliament to ratify the Hague Convention by the end of the year. While this is promising, Japan's Parliament has been slow moving in recent years due to political turmoil, and because of the introduction of the legislation it does not necessarily mean that the legislation will be successfully passed during this session of Parliament.

Should Japan sign the agreement, there will need to be changes in their domestic laws in order to reflect the values of the international community. In Japan, joint custody is not recognized, and it is almost always the mother that is given sole custody. Fathers often lose their right to access and are unable to contact their children. This practice will need to change if Japan were to follow the provisions of the Convention.

While Japan is certainly receiving the bulk of the attention, of the 86 participating nations, only four are from East Asia—Hong Kong, Macau, Thailand, and Singapore. I am interested in hearing

from the panel how Japan's ratification of the Convention might affect the other nations in the region.

Beyond the existence of nations that refuse to take part in the treaty are controversial provisions that do govern participating nations. For example, the Hague Convention makes an important distinction between the right to custody and the right to access. I look forward to hearing and learning from the panelists here today on how we can make the progress and the process of returning a child faster and more fair between States that have signed the treaty and how we approach cases where a nonsignatory State is involved.

I look forward to hearing the testimony of the witnesses, and I will yield back the balance of my time.

Mr. SMITH. Thank you, Mr. Payne.

Mr. Carnahan.

Mr. CARNAHAN. Thank you, chairman and ranking member, for calling this hearing today, and to the witnesses.

This is an issue that we need to be shining a light on. The 1980 Hague Convention on Civil Aspects of International Child Abduction is the principal international mechanism for the return of children. The Convention does not address the issue of child custody directly, but it does address how to determine the jurisdiction where a child custody dispute should be adjudicated.

The American Bar Association and their Center for Children and the Law conducted a survey of parents whose children have been taken or retained by another country by another parent. The key challenges they cited that a parent faces when trying to locate and recover children abducted to foreign countries include lack of sufficient funds, difficulties with foreign laws and officials, difficulties with U.S. laws, judges inexperienced in handling international abduction cases, and inadequate responses by law enforcement agencies.

The State Department has given us some numbers about the scope and size of this problem, including both Hague Convention and non-Hague Convention cases. The State Department Office of Children's Issues reports a total of 1,495 custody and access cases in 2010, involving a total of 2,123 children. So this is an issue that we need to be hearing more about, how we can get this process to work better, and appreciate what you all are here to do for us today.

I yield back.

Mr. SMITH. Thank you.

Mr. Frank.

Mr. FRANK. Thank you, Mr. Chairman and ranking member, for giving me the privilege of sitting with this panel. Because, as you know, I have a constituent, Colin Bower, who is particularly concerned about this; and, of course, it is an issue that I am supportive of in general.

I would say that we sometimes, I think, hold back in using our legitimate moral authority because we worry about somehow alienating other countries. Now, I want America to be reasonable and fair in its dealings with other people, but, as a general rule, it does seem to me that most countries in this world need us more than we need them. I don't want to abuse that, but I think we sometimes assume that we can't press hard because people will get mad

at us. Well, if I were many of these countries, I would be more worried about America getting mad at them. And, again, I don't say that to the extent that we should be bullies or that we should be overly aggressive. I do think, however, that a reasonable assessment of what the relationships are should allow us to press cases on their merits and not be held back by some fear that we will somehow lose influence.

I have to say, and we were all around during the days of the Cold War, that I might have had some plausibility back then. I think even then it was overdone, but in today's world I do not see any reason why American citizens seeking justice, especially in the most sensitive possible area, parents seeking justice with regard to their own children, I cannot think of a diplomatic reason in the cases I have seen that ought to retard our efforts.

So I thank you for the extent to which you both, on a bipartisan basis, have allowed us to press this very important moral cause.

Mr. SMITH. Thank you very much, Mr. Frank.

I would like to now welcome our two very distinguished witnesses, beginning first with Ambassador Susan Jacobs, who currently serves as Special Advisor in the Office of Children's Issues at the State Department. Ambassador Jacobs has had a long and distinguished career in the Foreign Service in which she has served around the world, including in Papua New Guinea, where she was the Ambassador. She has also held a number of senior positions with the State Department in Washington, serving as a liaison to both Congress and the Department of Homeland Security. In addition, Ambassador Jacobs has recently visited Japan and participated in an international conference on the Hague Convention; and, without objection, her full resumé will be made a part of the record and that of Dr. Campbell as well.

Dr. Kurt Campbell currently serves as the Assistant Secretary of State in the State Department's Bureau of Asian and Pacific Affairs and has been in that position since June 2009. Dr. Campbell has broad experience working with the government, having served as an officer in the Navy, in the Defense Department, National Security Council, the White House, and the Treasury Department. The only thing left is to run for Congress. In his time outside of government, he has founded an advisory firm focused on Asia, worked on international security issues at the Center for Strategic and International Studies, and been a professor at Harvard.

Ambassador Jacobs, the floor is yours.

STATEMENT OF THE HONORABLE SUSAN JACOBS, SPECIAL ADVISOR FOR CHILDREN'S ISSUES, BUREAU OF CONSULAR AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. JACOBS. Thank you very much.

Chairman Smith, Ranking Member Payne, and distinguished members of the committee, and Mr. Frank, thank you for holding this important hearing and for the opportunity to update you on the hard work of my colleagues in the Department of State in responding to this global threat to the well-being of children. I also want to thank my colleague, Assistant Secretary Campbell, for his deep personal involvement in this issue.

The problem of parental child abduction is deeply important to Secretary Clinton, who demonstrated her commitment to children by appointing me as her Special Advisor for Children's Issues last year. Tomorrow the Bureau of Consular Affairs and Assistant Secretary Janice Jacobs and Assistant Secretary Campbell will hold another town hall meeting with a group of left-behind parents, and this will be the sixth such town hall meeting to date.

Mr. Chairman and Mr. Payne, your leadership and involvement in this area strengthens the U.S. Government's message to foreign courts and central authorities in long-standing abduction cases.

My written statement goes into detail about my role, the role of the Office of Children's Issues, and the Department of State in general on this topic. Let me assure you that we are all committed to resolving current abduction cases, reuniting parents and children, and helping prevent future abductions. We strive to do what is in the best interests of children caught in these tragic situations. Case officers in the Bureau of Consular Affairs Office of Children's Issues and Foreign Service officers at our Embassies and consulates overseas work hard to achieve this goal every day.

Unless we succeed in returning a child to the United States, we have not been successful. As you know, we have abduction cases to both Hague and non-Hague countries. We work equally hard in both areas to return children to the United States. As this chart demonstrates, over the past 5 years, we are increasing our success in achieving returns from both Hague and non-Hague countries. It is interesting to note that the non-Hague return numbers have remained about the same, while Hague returns have steadily been increasing. Of course, the existence of the Hague Convention makes our work easier in some ways, but we often encounter other challenges.

In non-Hague countries we rely on quiet diplomacy, knowledge of local conditions, and respect for local customs, and often less visible means to try to resolve an international abduction case. The Hague Convention remains our best hope of resolving international abductions. It is the first subject that I bring up with foreign governments during my travels on behalf of the Secretary.

Parental abductions are tragedies that affect American families both in the United States and overseas. When a parent flees with a child across a State line, there is certainty that a court order from one State will be recognized in another. For a left-behind parent there may be stress and fear, but there is also belief in the American judicial system and the rule of law.

When a parent takes a child across an international border under false pretenses, the left-behind parent is faced with the daunting task of navigating unfamiliar legal, cultural, and linguistic barriers. They suffer emotional trauma and face significant and long-term financial stress to reunite with their children. We are fully committed to serving left-behind parents and children who are the victims of this crime.

Let me give you some highlights of what we have been doing lately. Today, the Office of Children's Issues is one of the largest offices in the Bureau of Consular Affairs. We have almost a hundred people working on abductions. The growth of the office enables us to broaden our prevention activities, ensure consistently

high standards of service, improve training, and engage more vigorously with other countries. It also allows us to monitor and improve our own compliance with the Convention.

The Convention, although a successful operating agreement, is not a perfect instrument. Fostering compliance with the treaty is an ongoing challenge. Over the last few years, the Department has participated in numerous judicial conferences and met with officials from 23 countries. The efforts are paying off; and my written statement details improving relationships, but not perfect ones, with Mexico, Brazil, Switzerland, and Bulgaria. In non-Convention countries, examples of successful cases highlight how the Department of State can play an invaluable role in helping left-behind parents understand foreign laws and their options, and we can point to some recent successes in the Philippines and in Iraq.

In conclusion, I want to assure you that we continue to develop programs and outreach to prevent abductions through increasing awareness of the issue. We work with other agencies, with nongovernmental organizations, we use social media in what we hope is a creative way, and we utilize our own consular affairs resources.

Your support remains vital. We hope that Congress will extend visa ineligibilities for those who abduct or aid abduction to Convention countries as it now exists in non-Hague countries. We also hope that Congress will continue to support us in offering financial assistance to the Hague Permanent Bureau. Congressional interest remains crucial as we encourage other countries to join the Convention.

Since accepting this challenging and rewarding position, I have met with many left-behind parents, some of whom are here today, and I have been deeply moved by their stories. I want to reiterate to them and to you that we will never forget our duty to serve each of our citizens and, most importantly our children; and I will be pleased to take your questions when appropriate.

[The prepared statement of Ms. Jacobs follows:]

DEPARTMENT OF STATE

STATEMENT
OF
SUSAN S. JACOBS

SPECIAL ADVISOR FOR CHILDREN'S ISSUES

BEFORE THE
U.S. HOUSE OF REPRESENTATIVES
COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND
HUMAN RIGHTS

HEARING
ON
IMPROVING IMPLEMENTATION OF THE HAGUE CONVENTION ON
THE CIVIL ASPECTS OF INTERNATIONAL CHILD ABDUCTION

JULY 28, 2011

Chairman Smith, Ranking Member Payne, and distinguished Members of the Committee — Thank you for the opportunity to address you today regarding international parental child abduction (IPCA), a matter of critical concern affecting the well-being of many children and families.

The State Department values the ongoing interest and support on this issue from Members of Congress. Congressional oversight of IPCA cases strengthens the U.S. government's message to foreign courts and central authorities in long-standing abduction cases. The Department of State appreciates the considerable efforts of Chairman Smith and the interest from Ranking Member Payne, as well as the many Members who advocate in support of their constituents affected by IPCA and parental child abduction in general. This issue is a high priority for the U.S. government; we must work as a team to ensure it is and remains a similarly high priority for other governments.

The issue of parental child abduction is deeply important to Secretary Clinton, who demonstrated her commitment to children by appointing me as her Special Advisor on Children's Issues last year. In this position, I routinely provide analysis and policy recommendations to the Secretary and Bureau of Consular Affairs. I strenuously encourage countries to join the 1980 Hague Convention on the Civil Aspects of International Child Abduction (the Convention) and recommend resources that can assist them. I work in concert with the Office of Children's Issues (CI), which supports me and the State Department's efforts to increase the number of children returned to their parents and to create safeguards that will minimize the risk of IPCA.

International parental abductions are a tragedy that affects American families both in the United States and overseas. When a parent flees with a child across an international border, the parent is committing a federal crime that has long-term consequences for both parents and children, even when cases are resolved. Children involved in IPCA cases are at risk for serious emotional and psychological problems. Left-behind parents confront unfamiliar legal, cultural, and linguistic barriers; suffer emotional trauma; and face significant and long-term financial stress to reunite with their children. CI is fully committed to serving left-behind parents and children who are the victims of IPCA.

On behalf of Secretary Clinton, I travel and regularly speak at conferences and hold meetings with government officials, parents, and non-governmental organizations (NGOs) to further the Secretary's agenda in resolving child abduction cases and encourage more countries to join the Convention. Last October, we organized an important meeting with foreign Ambassadors from the Asia-Pacific region, including Japan, to encourage them to join the Convention. We are planning a similar meeting with African region countries later this year. We strive every day to prevent children from being abducted and to bring them home safely. We accomplish this by using all of the Department's diplomatic tools and through the in-depth expertise of our staff in CI.

Working with our embassies and consulates, law enforcement agencies, and foreign central authorities, CI assisted in the return of more than 600 children to the United States during 2010. During the same period, our office also facilitated the return of 155 children from the United States to their countries of habitual residence under The Hague Convention. Over the past several years, we are proud to report the number of returns has increased, with over 30 percent more children returned in 2010 than in 2008. Currently in 2011, returns are up by another 30 percent compared with the same period in 2010. A table describing this is attached.

Yet every day we receive new reports on abductions. In 2010, CI received reports of 1,490 children abducted by a parent from the United States to a foreign country. We are also aware of 389 children abducted in a foreign country by a parent and brought to the United States in 2010.

The Role of CI

The Bureau of Consular Affairs created CI in 1994 with a staff of four officers focused specifically on intercountry adoption and IPCA. In 2008, the staff grew to 18 employees. Today, CI is one of the largest offices in the Bureau of Consular Affairs, with more than 100 employees in four divisions covering adoptions, incoming and outgoing abductions, abduction prevention, training, and outreach. The increase in staffing, sadly, reflects the increase of IPCA cases over the past several years. The growth of the office has enabled us to broaden our prevention activities, ensure consistently high standards of service, improve training, and engage more vigorously with other countries. It has also allowed us to monitor and improve our own compliance with the Convention. Please refer to the attached table.

The 1980 Hague Abduction Convention

The U.S. government believes the most effective tool for left-behind parents seeking to reunite their families is the Convention. This multi-lateral international treaty provides a civil mechanism to return children who are wrongfully removed from or retained outside of their country of habitual residence. Proceedings under the Convention do not decide custody, but provide a framework for determining in which country the custody decision should be made. Each Convention partner country establishes a central authority, which cooperates with other central authorities in Convention countries, to assist in the potential resolution of child abduction cases. Last year, more than 60 percent of children returned to the United States came from Convention partner countries. For this reason, it is our stated policy to strongly encourage other countries to join the Convention. I have personally encouraged senior officials in Japan, Korea, India, Jordan, and Egypt to join the Convention.

The Convention, although a successful operating agreement, is not a perfect instrument. Fostering compliance with the treaty is an ongoing challenge. Some countries devote inadequate resources to their central authorities, and this makes the timely processing of cases difficult. The courts in some countries misunderstand the legal framework of the Convention. Judges may improperly treat a Hague hearing as a custody decision, while the Convention mandates the custody be determined by the proper jurisdiction. Similarly, other countries may show bias toward their own nationals in their legal decisions, especially when the abducted children are dual nationals. Lengthy judicial and appeals processes also contradict the principles of the Convention, which calls for expeditious proceedings. In some countries, simply locating missing children remains a serious obstacle to resolving cases because a Convention proceeding cannot be requested until the children are located. Even when the outcome is favorable and results in a Hague return order, enforcement is not always automatic, and the child's return can be delayed by multiple appeals or undertakings that impose unrealistic conditions on the return.

For countries seeking to comply with the Convention, the U.S. Central Authority, in coordination with our treaty partners and The Hague Conference on Private International Law, offers legal and infrastructure technical assistance and guidance. We sponsor judicial seminars on the Convention in partner countries across the globe. Over the last few years, the Department has participated in judicial conferences and met with officials from, among others: Argentina,

Brazil, Bulgaria, Canada, Chile, Colombia, Costa Rica, the Dominican Republic, Ecuador, El Salvador, France, Guatemala, Honduras, Israel, Malta, Mexico, Nicaragua, Panama, Paraguay, Spain, the Bahamas, Trinidad and Tobago, and Venezuela.

I am pleased that the efforts to increase our engagement with other countries are successful, especially in Convention partner countries that have been cited repeatedly in our compliance reports to Congress. In Mexico, we see marked improvement in the ability of the Mexican government to locate and return missing children. CI is meeting regularly with our Mexican counterparts to encourage and support their progress. Overall, 15 percent more children were returned to the United States from Mexico in 2010 than in 2009. This positive trend has continued in 2011, with 121 abducted children being returned from Mexico since the start of the year, a 35 percent increase over the same period in 2010.

Brazil is another country cited repeatedly in recent compliance reports. However, Brazil has made some progress. In May 2011, one child was returned to the United States in a court-ordered return under the Convention and one more child is scheduled to travel at the end of July 2011. Eight other children have returned from Brazil this year through voluntary arrangements reached by the parents, often through mediation. During my trip to Brasilia in May 2011, we formed a U.S.-Brazil working group on children's issues. We will host the first meeting in Washington August 29, 2011, which will cover a range of issues—from reviewing individual cases and sharing best practices on judicial training to bilateral efforts to encourage other countries to join the Convention.

We intensively engaged with the Swiss Central Authority about our concern that Swiss judges were ruling against left-behind fathers and denying returns in cases where the United States was clearly the habitual residence. The result of our increased communication resulted in the resolution of our common cases. In two of four cases, the Swiss court ordered a return. In one case, the court ordered access and in another case, the parents are working on mediated agreement. Our engagement has greatly improved our partner relationship with Switzerland.

We have also cited Bulgaria in our reports to Congress. We have worked to provide assistance as Bulgaria revises its domestic child welfare laws. CI officials traveled to Sofia in September 2011, and just last week, we hosted meetings with a group of Bulgarian judges. We are pleased with the improved communication and relationships we are developing with Bulgaria.

In cases where countries are not members of the Convention, CI officers work with parents to understand what their options are in the foreign legal system or, if they prefer, with the U.S. criminal justice system. These cases are protracted and challenging. However, we have many examples of successful cases that highlight how the Department of State can play an invaluable role in helping left-behind parents understand foreign laws and their options. CI can coordinate assistance across many U.S. and foreign government and law enforcement agencies and ensure case developments are communicated efficiently and clearly. CI can also connect parents with social service resources and take all possible actions to monitor and protect the welfare of the abducted children.

In the Philippines, CI and the Embassy worked with local social services and judicial authorities to help a left-behind mother address child abuse allegations, pursue recognition of her U.S. sole custody order in the Philippines, and in the end, obtain a Philippine court order awarding her custody of her two children. The children returned to the United States with their mother in June 2011.

Another very dramatic case involved a child retained in Iraq. The CI officer coordinated with U.S. law enforcement to locate the taking father in a remote part of the country. Under CI's guidance, Department officials working at the Provincial Reconstruction Team in Erbil were able to negotiate the child's return through local officials. Once the return was agreed upon, a consular officer working in Vienna traveled to Baghdad, escorted the child to Austria, and provided refuge until the child's mother arrived to reunite with him.

Prevention and Assistance

Clearly, the most effective method of resolving IPCA is prevention. CI continues to develop programs and outreach to prevent abductions through increasing awareness of IPCA, and assisting left-behind parents in new and ongoing cases. Our prevention staff works with Passport Services to administer the Children's Passport Issuance Alert Program (CPIAP), an information system built into our passport database to prevent abductions. This program enables parents to register their U.S. citizen children in the Department of State's Passport Lookout System before an abduction occurs. If a passport application is submitted for a child who is registered in CPIAP, the Department contacts and alerts the parent. Since its inception in 2003, we have enrolled over 63,000 children into CPIAP.

Our prevention unit also works intensively with law enforcement and parents to educate the public about the criminal nature of IPCA. Prevention officers train law enforcement and consular personnel to recognize and respond to signs of suspected IPCA. In emergency situations, prevention officers coordinate with the Department of Homeland Security and the FBI to try to halt abductions in progress.

More broadly, we are utilizing social media, such as Twitter (@ChildrensIssues) and Facebook to help educate the public about our work. We are redesigning our website to simplify and streamline access to information about our services. In conjunction with National Missing Children's Day, CI initiated a month-long prevention campaign on Twitter and on our website to familiarize U.S. citizens with our work. The Secretary released a video message to raise awareness to the plight of missing children and our efforts to combat IPCA. Many of our embassies posted the video message on their websites and hosted their own events with foreign government officials. We believe that these actions encourage nations to join the Convention and for those who are already members, to work harder on fulfilling their treaty obligations.

Assistance to Left-Behind Parents

In cases where an abduction has occurred, CI officers work closely with our colleagues at embassies and consulates around the world to assist parents to recover their children. Resources are available for left-behind parents to help them understand and navigate the legal and diplomatic process to facilitate their child's return. These materials are accessible online or by phone and provided regardless of a parent's immigration status, English-language capability, or financial situation. Individuals can obtain information on our website (travel.state.gov) or through our 24-hour toll-free number (888-407-4747). We provide lists of attorneys in the United States and abroad, a language line for parents who do not speak English, law enforcement liaison services, and victim assistance. We are available to respond to emergencies 24 hours a day, seven days a week, worldwide.

The Department of Defense and IPCA

We recognize that military service members and their children have particular vulnerabilities to parental child abduction given their frequent deployment overseas. In response, CI is collaborating with the Department of Defense (DoD) to raise awareness of this problem among members of the Armed Services. We are working with the DoD Family Service Centers and Family Advocacy Program, and are training Judge Advocate General personnel to educate them about IPCA and its effects on active duty military families as well as to prevent IPCA.

Our collaboration has resulted in successful resolutions. In one case, a military officer retained his three children in Germany, even though a U.S. court ordered the children's return. CI and U.S. Consulate Frankfurt coordinated with DoD in Washington and with the command at the military installation where the officer was assigned to detain the father, allowing the children to be returned to the United States. In countries where the U.S. military presence is large, this collaboration potentially will help prevent military families from becoming the victims of IPCA, and it will facilitate the return of many abducted or wrongfully retained children.

The Hague Network Judges

I would be remiss if I did not acknowledge the efforts of four judges who serve on our Judicial Network, a group formed in June 2008 to promote direct judicial communication and Convention compliance at home and abroad. These judges are:

- The Honorable James Garbolino, Judge (ret.), California Superior Court;
- The Honorable Judith Kreeger, Judge, Circuit Court, Miami-Dade County;
- The Honorable Mary Sheffield, Presiding Judge, 25th Judicial Circuit, Missouri; and
- The Honorable Peter J. Messitte, Senior Judge, United States District Court for the District of Maryland.

These judges have represented the United States at IPCA conferences, facilitated judicial communication in critical cases, and provided their expertise with respect to judicial education. We are grateful to each of them and look forward to continuing this productive partnership.

The Hague Conference

As a member of The Hague Conference on Private International Law, we actively support the activities of the Conference's secretariat, The Hague Permanent Bureau. In June 2011, we participated in The Hague Special Commission meetings regarding the practical operations of the 1980 Abduction Convention and the 1996 Hague Convention on the Jurisdiction, Applicable Law, Recognition, Enforcement, and Co-operation in Respect of Parental Responsibility and Measures for the Protection of Children (1996 Convention). Such Special Commissions are held every five years and provide an excellent opportunity for member countries to discuss best practices, encourage implementation, and raise new issues. Similarly, these meetings provide an opportunity to encourage other countries to become party to the Conventions. At this year's Special Commission, nearly 300 experts discussed topics of interest, including cooperation among Central Authorities, processing applications for return and access, domestic violence allegations and their effect on return proceedings, direct judicial communication, and the recently drafted guide to good practice for mediation of cross-border family disputes.

Many Convention partners use mediation as an alternative to civil litigation in some parental abduction cases. We are examining what role mediation can play in resolving abductions to the United States. Legal proceedings in this country can be expensive and complicated. Although we are still researching this issue, we believe that high-quality mediation

services may help families avoid drawn-out court battles and create solutions that are beneficial to both children and parents. Mediation may also be an option in non-Hague countries and in some countries where few legal mechanisms may exist for resolving international custody disputes. To address this issue, the State Department solicited proposals from organizations interested in developing mediation programs to use in these countries as well.

On October 22, 2010, the United States signed the 1996 Convention, affirming its commitment to protecting the rights and welfare of children around the globe. The 1996 Convention will complement and help to reinforce the Abduction Convention. It will help to ensure our treaty partners recognize and enforce U.S. custody and visitation orders. Under the 1996 Convention, authority to make child custody decisions lies in the child's place of habitual residence. It also includes special provisions for the protection of runaway children and the cross-border placement of children in foster families or institutional care. Our office looks forward to Congressional input as we move forward in the process to ratify and implement the 1996 Convention.

The Role of Congress

Congressional support remains vital. Current law establishes visa ineligibility for those who abduct or aid in the abduction of children to countries not party to The Hague Abduction Convention. The State Department has proposed legislation to extend this ineligibility for those who abduct or aid abduction to Convention countries as well. We also recommend continued financial support for The Hague Permanent Bureau, which offers critical technical assistance on treaty compliance and trains judges, central authorities, law enforcement officials, attorneys, and social workers on the application of The Hague Convention. The Department welcomes Congressional support as we encourage countries such as Korea and India to join the Convention, and work with Japan both to join The Convention as well as to create legal and administrative structures to implement the treaty.

Conclusion

Mr. Chairman, Mr. Payne, distinguished Members of the subcommittee, since accepting this challenging but rewarding position, I have met with many left-behind parents and I have been deeply moved by their stories. In CI, our committed staff understands the harsh realities and complexities of child abduction matters. They work every day with parents in crisis. They understand IPCA is one of the most stressful and heartrending situations anyone can experience. CI staff is a group of bright, motivated, compassionate, determined professionals who work hard to support parents and seek solutions to the tragedy of international child abduction.

The prevention and prompt resolution of abduction cases are of paramount importance to the United States. We will never forget our duty to serve each of our citizens and most importantly our children.

Thank you. I am pleased to take your questions.

Mr. SMITH. Thank you very much, Ambassador Jacobs.
Dr. Campbell.

STATEMENT OF THE HONORABLE KURT CAMPBELL, ASSISTANT SECRETARY OF STATE, BUREAU OF EAST ASIAN AND PACIFIC AFFAIRS, U.S. DEPARTMENT OF STATE

Mr. CAMPBELL. Thank you very much, Chairman Smith; and let me join Ambassador Jacobs by just saying that we very much appreciate your compassion and your commitment to this incredibly difficult subject. Frankly, your activities have both motivated me and have given me a model for how to do my job.

I also want to associate myself with my former Congressman, Congressman Frank. I think his perspective is at least the perspective that I try to use when undertaking the various aspects of this job.

Let me just say that, as the Ambassador has indicated, this is a human tragedy that, unless you experience and have a chance to get to know these brave parents, it is just impossible to imagine. And I have been struck by their commitment, by their compassion, by a patience to try to keep at it even when I just—I can't imagine how they go on, to be perfectly honest; and every single one of them has demonstrated the kind of courage that I am not sure I myself would be able to summon in such a circumstance.

The first time I had a chance to meet with the parents was on a previously scheduled meeting with the parents. I had just been confirmed in my job, and I remember sitting down with them. We had our team at the State Department, and after about 15 minutes into the meeting, I just had to say, I was just woefully embarrassed. We just had not done a good enough job. We were not organized. We had not brought to bear the full capacities of the U.S. Government; and, frankly, we just apologized there on the scene and just said we have got to do a better job.

That was about 2½ years ago. Since then, we have put together, working very closely with my colleagues and in consular affairs, probably one of the most substantial task forces we have inside the U.S. Government that involve key officials from the White House, from the Justice Department, the Department of Homeland Security, various other legal groups around the U.S. Government, every aspect of the State Department, also linking in with my colleagues on a very regular basis in Tokyo.

I will also say, Ambassador Jacobs' job is primarily global. Mine is in Asia. The two countries we have worked most on over the course of the last 3 years are Japan and South Korea. And I am very pleased to say, although it has not come up, South Korea in January of this year agreed to accede, and they are well along in implementing language. And I will tell you that the steps they have taken are very impressive, and we often highlight them as a model for what we would like to see with respect to Japan.

So I just want to underscore that we take this extraordinarily seriously. Every single meeting that Secretary Clinton has with her counterparts this comes up, every single meeting. Every meeting I have, this has come up. I have met with almost all of the key officials in Japan on numerous occasions, and I think, as has been pointed out, Congressman Smith, the most senior officials in the

Japanese Government have indicated that they are going to sign the Hague Convention.

Now, you know, I can understand why certain friends would say, well, that is a step, but it is not that impressive. You have no idea how hard it was to get to this point. And I will also underscore—and you mentioned it a little bit in your testimony—it would be very hard to describe some of the cultural challenges that we face in a variety of different countries. It is not unusual in Japan after a divorce that a father will rarely, if ever, see their children. So this is an issue that is not simply a source of great concern for the United States, but I must tell you it is an issue that is gaining momentum in Japan as well, and we actually hope to use this campaign to help people understand what we believe are some of the deep problems associated with separating families in this way.

So I just want to underscore that we did not do a good enough job, but what we are trying to do now is make sure all of our databases are completely up to date, very regular communications. When we get specific information about where we have dropped the ball—that is why they call it government, after all—we try to follow up, make sure that we are taking the appropriate steps to be responsive to these particular issues. And, to be honest, if I ever hear of someone at least that I have some responsibility over or I work with that doesn't treat one of these parents with respect and doesn't understand the nature of the tragedy that they are dealing with, we often will immediately look for a new assignment for that person.

So I just want to underscore—and if I could suggest, Congressman, if you would like, we are going to have a long meeting tomorrow afternoon. I would welcome if you would like to come to part of that or a member of your staff. We would welcome it. Some of that is going to be—some of that will be just on executive business, but I would love for you to come, perhaps speak, and I have—I would welcome it. I think it would be a great thing; and, frankly, I need to underscore that bringing attention to this issue is important.

I don't want to go on too long, but I just want to make a couple other points, if I can, before we open it up to questions.

Our most important relationship in Asia by an order of magnitude is with Japan. The U.S.-Japan security relationship is of utmost importance, and I stand really next to no man in terms of my commitment to this relationship. I will do anything to preserve a strong relationship between the United States and Japan because I believe it is in our mutual interests.

One of the greatest sadnesses that I have in this relationship—I have been to Japan over 200 times in the last 25 years, and I have talked to innumerable Japanese friends about this matter. Japanese people are a compassionate, wonderful people, and when they are educated and know about a topic, you can count on them to do the right thing. But I am struck again and again and again and again when we meet with Japanese friends and talk about these issues, the level of misunderstanding on these issues is profound, deep, and sometimes almost uniform. There is a view that these families are divided because of abuse, and there is not a deep

recognition of some of the legal challenges that, frankly, we are coping with.

And so no matter what we do going forward, and this will be an important part of the effort associated with the Hague Convention is an education campaign, and the area where I would like to see more support not only from the families and others, but I want very much for Japan to have a better sense of the human dimension here, and I am doing what I can to support this.

I must just take a moment for kudos. The Ambassador that I have worked the most on this with is Ambassador Roos. No one has done more on this issue than Ambassador Roos, and he has made it his personal commitment and has met with all the organizations, many of the legal groups inside Japan to support this.

And I will say that in many cases it is very hard to determine progress in life. We work on things for a long period of time, and it is hard to see progress. I have to honestly and modestly suggest that we have made real progress in the last 2 years. There is a big change under way in Japan, and we anticipate when the Japanese leader visits in September that we are going to see a big step forward, and that would not have been possible, frankly, without your leadership, Congressman, and without the passion and commitment of the parents behind me.

I also want to say that there are a couple of people, young people, professionals, Todd Campbell and others, who have been relentless on this and who have also been seized by the importance of this.

The signing of the Hague Convention, as you have indicated, Congressman, is in no way a first—just simply a first step or a last step. It has to be part of a process, and we have underscored in all of our conversations with Japanese interlocutors at the highest level that what we are concerned by is not just cases going forward, not just improving practices going forward, but retroactive, cases that came before or that come before the signing of the agreement.

But here I must underscore to you—and I appreciate the information that has been provided to you—there are actually many cases globally where countries, particularly in Europe, once having signed the Hague Convention, then implement legislation or laws that allow us to deal with preexisting cases, and that we have made very clear with Japanese colleagues is important from our perspective.

Now, the truth is we need a legal framework. We need an understanding of this issue that is global as a necessary first step. This is not easy work. It is painstaking. I also understand and appreciate the profound impatience. You want to get to this and try to see immediate progress on these specific cases.

We have tried to underscore to Japan that even during this difficult period when they have some confusion in their government—we have some of that ourselves—they are still determined to take the necessary steps. The legal changes in their canon of laws are quite deep, but their government appears prepared to take the necessary steps. And I must tell you, quietly, we have had a very significant dialogue with them about what we expect in the implementing legislation and how we will not rest until we see the kinds of changes that are necessary and that we will certainly not abide

by loopholes or other steps that will, frankly, somehow negate or water down the essential provisions of the legislation as a whole.

I would also like to say this very carefully and directly. We have not ruled out any other legal process. We have not ruled out anything in our overall approach. And I will also say quite directly, we have also explored certain aspects associated with the extradition process. I am not going to talk about that any more directly. I want to just simply underscore that we view every tool on the table with respect to resolving this important issue.

I still think the process has gone too slow. I would like to see it speeded up. And, frankly, one of the most important things that we can do on this issue is to increase awareness in Japan and to make clear that Americans are a patient people, but we also have our limits, and that while our preference is to solve these issues in a way that deeply respects the national dignity, the cultural sensitivities of all involved, we do reach points in struggles where we have to look at other means, and we are approaching that situation.

So I am hopeful that we are going to see the necessary steps very shortly. We are looking forward to a deeper process with respect to Japan on implementing language, and we also want to see specific progress on particular cases.

With that, and I am sorry to go on so long, Congressman, I thank you for your opportunity to appear here today.

[The prepared statement of Mr. Campbell follows:]

DEPARTMENT OF STATE

STATEMENT
OF
KURT M. CAMPBELL

ASSISTANT SECRETARY FOR EAST ASIAN AND PACIFIC AFFAIRS

BEFORE THE
HOUSE COMMITTEE ON FOREIGN AFFAIRS
SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND
HUMAN RIGHTS

INTERNATIONAL PARENTAL CHILD ABDUCTION

JULY 28, 2011

Chairman Smith, Ranking Member Payne, and distinguished Members of the Committee, thank you for the opportunity to appear before you today to testify on international parental child abduction in Japan. I want to particularly thank this Committee for its leadership on advancing dialogue and focus on this important issue.

Overall U.S.-Japan relations are strong. The Japanese public has been enormously grateful to the United States for the speed, size and effectiveness of our response to the earthquake and tsunami on March 11, including the U.S. military's "Operation Tomadachi (friend)" that supported Japanese search, rescue, and relief operations. The United States has also provided equipment and expert assistance to assist with the damaged nuclear reactors. American business and private citizens have donated generously to relief efforts. Thanks in part to American relief efforts, favorable opinion of the United States is at its highest point in nearly a decade, climbing to 85 percent positive this spring.

The U.S.-Japan alliance is the cornerstone for American strategic engagement in the Asia-Pacific. With American forward deployed forces in the Pacific stationed in Japan, our ability to operate and project power and influence in Asia is directly linked to our treaty alliance with Japan. The U.S.-Japan alliance has helped underwrite peace and stability in East Asia for over 50 years and enabled a context for economic growth and prosperity. As the world's third largest economy and a democratic nation our shared interests in promoting peace, security, and prosperity are central features of our partnership,

While the U.S.-Japan relationship is overwhelmingly positive and an essential feature of our strategic engagement in the Asia-Pacific region, the perennial issue of international parental child abduction in Japan remains a point of concern for the Department of State and the United States Government. Greater access to Japan – enabled by more frequent and direct air links to Tokyo – has increased the number of parental abduction cases involving Japan, and with a direct impact on U.S. nationals as well as Japanese citizens. As recently as 2005, the Department counted only 11 reported abduction cases involving Japan. Today the Department tracks 123 active abduction cases involving 173 children with Japan alone.

To address this issue Secretary Clinton, Assistant Secretary Janice Jacobs, Ambassador Roos, and Ambassador Susan Jacobs, and I, alongside many other Department officials have consistently urged Japan to ratify the 1980 Hague Convention on the Civil Aspects of International Child Abduction ("the

Convention") in the hopes of establishing a legal mechanism to address the rising tide of international abduction cases in Japan. Secretary Clinton has repeatedly raised this issue at the highest levels of the Japanese government. In addition, all of us routinely hold town hall meetings and correspond with members of the community of U.S. nationals who have had their children illegally abducted to Japan. These town hall meetings provide important inputs to our policy formulation process and allow parents to meet with a broad range of interagency stakeholders from the U.S. government to help answer questions. Regardless of the progress made toward Japanese ratification of the Convention, I am personally committed to holding these meetings.

The Convention seeks to protect children from the harmful effects of their wrongful removal or retention across international borders, which is a tragedy for all concerned. The Convention further establishes procedures to ensure the prompt return of children to the country of their habitual residence when wrongfully removed or retained and secures protection for rights of access of both parents to their children. Under the Convention, a country is not bound to order the return of a child, if it is established that there is a grave risk that his or her return would expose the child to physical or psychological harm or otherwise place the child in an intolerable situation. While this exception to return is intended to be applied narrowly, it is an important measure to protect those children who would be placed at risk if returned to the habitual residence. To date, 85 countries have acceded to the Convention.

Japan is the only G-7 nation that has not implemented the Convention. Currently the left-behind parents of children abducted to or from Japan have little hope of having their children returned and encounter great difficulties in obtaining access to their children and exercising their parental rights and responsibilities.

We are pleased, however, that our efforts to encourage Japan to join the Convention appear to be bearing fruit. On May 20 of this year, Prime Minister Naoto Kan's Cabinet publicly stated the GOJ's intention to ratify the Convention. Soon thereafter, Prime Minister Kan himself relayed this message to President Obama when the two heads of state met at the G-8 Summit held in Deauville, France.

Japanese officials have indicated that after ratification Japan's implementing legislation will include reservations to the Convention permitting a Japanese court to reject a return application. Among the reasons under which a court could reject a return petition are reportedly: 1) The taking parent has been abused (or is likely to be further abused) by the left-behind parent if she/he returns with the child; 2)

the taking parent faces criminal prosecution in the other country; or 3) The taking parent cannot meet the financial cost of living in the other country. These exceptions are based primarily on Article 13(b) of the Convention. They appear to be responsive to objections raised by Japanese opponents of the Convention, particularly that the Convention does not protect Japanese mothers. Our view is that the Convention and procedures it calls for adequately protect the legitimate rights and needs of Japanese mothers as well as children and other parents. Japanese officials have assured us that Japan will implement the Convention properly and does not seek to circumvent the basic premise of the Convention that custody of children should be determined in the court of the child's habitual residence. We look to Japan to take the necessary steps to ensure its full compliance and commitment to the Convention.

We will continue to look for ways to ensure the Convention, once ratified by Japan, becomes an effective tool to address these heart-wrenching cases. While the Convention will only apply to cases that arise after ratification, we continue at all levels to encourage the Government of Japan to implement measures that would resolve existing child-abduction cases and allow parents currently separated from their children to reestablish contact with them and ensure visitation rights. In this regard, we call on the Japanese government to take steps to enhance opportunities for visitation and access. We are prepared to use all necessary political and legal means necessary to facilitate contact and access for parents and abducted children.

As part of these continuing efforts we have sent Hague experts to meet with and brief Japanese officials on the inner workings of the Hague process and are planning to host Japanese officials within the Bureau of Consular Affairs to give them the chance to see how our own central authority handles cases of international child abduction. We are constantly looking for additional opportunities to engage with our Japanese counterparts on this issue, make progress on successful implementation of the Hague Convention, and gain tangible results in existing cases.

We value the continued support of you and your colleagues in what we at the Department of State consider to be one of the most important issues facing the U.S. - Japan relationship. At the end of the day we are all here to assist United States citizens and, while much work remains to be done, a great deal has been accomplished. Together, over the course of the past two years, we have moved from a place where there was little if any dialogue on the issue of international parental child abduction in Japan to one where ratification of the Hague Convention is part of the public discourse in Japan and on the agenda for ratification. We also have a public commitment by the Government of Japan to put

in place the legislation needed implement the Hague Convention. These are considerable accomplishments, ones we should all be proud of, but at the same time recognizing the remaining challenges of resolving existing cases. This issue remains a top priority for Department of State and I look forward to continuing to work with you and your colleagues in the days ahead to try to reach a satisfactory outcome.

Thank you for the opportunity to testify before you today on this important issue. I welcome any questions you may have.

Mr. SMITH. Dr. Campbell, thank you very much.

And thank you both for your—and I said this in the outset—the strongest possible empathy and concern. There is no doubt about that.

The key is how do we work out the best resource thing; and I know, Ambassador Jacobs, you mentioned some 100 people working, which leads to one I guess we call it oversight question. Back in 2000, I was the prime author of the Admiral Nance and Meg Donovan Foreign Relations Act of 2000. Section 201 of that Act directed the Office of Children's Issues to report to each parent who has requested assistance at least once every 6 months on the current status of the abducted child's case and the efforts by the State Department to resolve the case. Is that being done? Perhaps it is being done even more robustly than that.

And, secondly, what is the average case count per Foreign Service officer?

Ms. JACOBS. Thank you for that question.

I am pleased to tell you that we are talking to the parents at least twice a year and more often when there is a change in the case. And, also, thanks to congressional oversight which limited the caseload to 75, most officers only have a caseload of about 65 cases, but we have teams of officers working on abductions with case assistance.

So what you have done for us is to make it possible for us to have more information about the cases, to continue to do training to improve our professionalism, and to just keep on top of all of the issues that are involved. So I thank you for that.

Mr. SMITH. One of the amendments that we were able to get into the foreign ops bill—it got pared down a little bit in conference, and the final wording was still, I think, very good—and that was to ensure that the left-behind parents knew that one good advocate or one course that they might choose if they wanted to opt in would be to contact their Congressman or Senators, or both, and I am wondering how that is being implemented. Are members being systematically advised, you know, observant of Privacy Act concerns and the like, when they have somebody in their district who is a left-behind parent?

Ms. JACOBS. As far as I understand, when we open a case and the first time we talk to the left-behind parent, we tell them that they might want to contact their Senator or Congressman. Because we fully believe that your engagement really helps us. When Congressmen visit overseas and they raise these cases, it helps us tremendously to keep the momentum going forward in seeking a resolution to the cases, and we appreciate your help.

Mr. SMITH. If you could maybe elaborate on that, how many Congressmen have been so notified. Because, again, members on both sides of the aisle—Mr. Frank is fighting tooth and nail to help his constituent. We all do that, and we think we do it well. We want to work in concert, as a team, to use your phrase, with the Department. But if we don't know about it, we could travel to a country where somebody could be in the same city with an abducted child and have no clue unless we are somehow brought into the mix.

Ms. JACOBS. As far as I understand the process, we tell the parents that they should contact their Congressman. We don't do that

directly, because, at that point, we don't know if that is what they want to do. So if they do it and then congressional staff inform us, then we can track the case; and, if you are traveling, then we can give you points that you can use in these discussions. I mean, we want to be as helpful as possible, as transparent as possible, and give you the information you need.

Mr. SMITH. What I am trying to get at is that—and the reason why I wrote the language which Nita Lowey accepted, and Kay Granger was actually the one who brought it to her at our request—was to say there is value added. We may be the other side of town and a coequal branch of government, but we do have caseworkers, and we do take this personally, and particularly members who, like Mr. Payne and I, on the Foreign Affairs Committee, the interface that we have with diplomats is every day, but if we don't know about a case—so I hope it is being done very enthusiastically.

Ms. JACOBS. It is done very enthusiastically, because we really need your help and support.

Mr. SMITH. Let me ask you a question with regards to reciprocity. One of the more disturbing issues is the lack of understanding that American judges rely upon with regards to reciprocity obligations in the treaty. How does an American judge know not to send a child for summer vacation, for example, to a country that has both been either noncompliant or exhibiting patterns of noncompliance?

Ms. JACOBS. We have a network of Hague judges who do an awful lot of training, and I think that this is a concern that they would raise. Judges can also certainly call us, and we can provide information if they ask it.

Unfortunately, we don't always know when these cases are being held. So what we have to rely on is a lot of training, a lot of work with our Hague network of judges, and encouraging them to do a lot of training so that these issues are at the forefront.

Mr. SMITH. Let me ask you, you know, I offered an amendment to the DOD authorization bill, and it largely came out of Paul Toland's case, which I know you are well aware of, which is a heartbreaker and a very long case. He got very bad advice from the JAG. And I know there has been one meeting. Have there been additional meetings to get DOD in particularly Okinawa and some of the places where there is more likely to be this kind of abuse of children who have been abducted?

Ms. JACOBS. Thank you for raising that. I appreciate it.

We have been doing, since your amendment to the DOD bill, a lot of work on training with DOD. We have had meetings with the chief legal counsels of all five services, we have done some JAG trainings both in person and through webinars, and I think we are making some progress. And they have given us direct points of contact, as we have given them, so that they can communicate directly with us should they have any concerns about a case. Because I think military personnel are at risk for this. They are overseas.

Mr. SMITH. Is this something that a status of forces agreement needs to incorporate? It seems to me that—and, Dr. Campbell, you very rightly point out in your testimony and orally—I mean, Japan is a great friend and strategic ally. They are key to both of our and their protection in that part of the world or security. And yet if,

as is the case, several of our service members have had children abducted, and in the case of Paul Toland, he was in Yokohama when he was stationed there. It seems to me that the Japanese ought to be more forthcoming and say it is in their own interests to ensure that the courts are much more responsive than they were in his case and virtually every one of the other cases.

Mr. CAMPBELL. One of the things that we have learned over the process—and, frankly, lots of help from the parents in this—is that I think in certain circumstances we have seen a culture of complicity in terms of providing passports sometimes in situations that were inappropriate, legal corners cut that would favor certain outcomes; and one of the things that we have tried to underscore is that we are looking carefully at every aspect of this. So one of the things that Susan has said is that, you know, there are the issues going forward and the issues that are pre-existing, and we are trying essentially to divide our time to ensure that we address both issues.

For instance, changing the procedures under which passports are issued, Japanese passports in particular are issued, has been a source of enormous pressure that we are trying to bring to bear. Because, as it currently stands, although it is changing, it is possible to get a passport without appearing in person.

Mr. SMITH. Yeah.

Mr. CAMPBELL. And we have also indicated that steps that would somehow be taken that would facilitate such steps by someone with diplomatic privileges would be viewed very negatively by the United States, and we would lodge some formal and official complaints.

Furthermore, the efforts that you are talking about, particularly in Okinawa and around Yokosuka, are well under way. There is much more knowledge and understanding, frankly, not simply for the Japanese but for American service members, who don't often know the nature of their own legal rights and responsibilities. And so we have tried working with sort of Embassy consular and Janice's good folks, working with JAGs, but not just JAGs, the leading commanders of our major bases both in Japan and Korea, so that there is a better understanding of the nature of some of the existing laws and some of the problems that a serviceman or woman might run into.

Mr. SMITH. With regards to Michael Elias' case, obviously, the Japanese Government said they were investigating. Had they concluded that investigation? Is she being held liable, criminally or civilly, in any way?

I traveled with Michael Elias' parents, and they would not even allow the taking parent for the grandparents to visit with Jade and Michael, Jr. The tears that were shed on that—and there are people in this room who have shed those tears every day, and it must be doubly hard at midnight to morning when the full weight of this abduction weighs upon their hearts. What can you tell us about Michael Elias' case?

And let me just say, and this will underscore, after I got involved with David Goldman's case, people literally walked into my office—Patrick Braden was one of those who is here as well, and his daughter Melissa was abducted. He remains very concerned about

her welfare and well-being for reasons you know and I know as well, based on the case.

We went over to the Embassy, couldn't even get a meeting. And I will never forget this. It was her birthday that day, and a birthday cake was out, you know, on the sidewalk, candles were lit. We all sang happy birthday to his little daughter Melissa halfway around the world.

The insensitivity was mind-boggling on the part of the Japanese Government. And you talked about sensitivity. Here is a man being deprived access to his daughter, and really custody ought to be given.

The abducting case in, as we all know, Michael Elias, absolute fraud seems to have been perpetrated, duplicate set of passports created; and, of course, Toland and all the others, many of whom are here. I hope the Japanese Government gets that. This is not going away. It is only going to get worse in terms of congressional scrutiny.

Two weeks ago, a group of parliamentarians were here from the Diet, and they asked that we withhold food aid to North Korea because of what? Abductions. And I am with them on the issue of abduction. Whether or not food aid is the proper way because of starvation that is massive in North Korea, I would argue it is not, but still their point about abductions, I agree 1,000 percent. Well, apply that equally to American left-behind parents.

Let me ask a very specific question, two part, and then I will go to Mr. Payne for any questions he might have and then Mr. Frank.

You point out that among the reasons that the court could reject the petitions, this is Japan, of course, and Dr. Campbell to you, would be—and I guess this is Article 33 B of the treaty—the taking parent has been abused or is likely to be further abused. I hope that we are insisting in our bilateral with them that this better be evidence-based and not just mere assertion.

Secondly——

Mr. CAMPBELL. Of course, of course.

Mr. SMITH. I am sure you are, but if you could just articulate, that would be helpful.

Secondly, the taking parent faces criminal prosecution, and I know that very seldom is prosecutions—and you might want to speak to this—the International Parental Kidnapping Crime Act does allow for prosecutions, but they are rarely done but you might want to speak to how often they are done. And it would be very helpful to know that and for Hague countries it is not done, but these are pre-Hague.

And then the taking parent cannot make the financial cost of living in another country. It seems to me that is like a loophole that you could drive a Mack truck through. You can say I can't buy a ticket, the taking parent, and it may cost too much and that becomes an opt-out. That would be rife with exploitation on the part of the taking parent if they were to be able to assert that. So I hope we are pushing back, and please speak to that.

And finally, if you would, Dr. Campbell, if you could speak to the issue of a sidebar bilateral agreement and an MOU which, again, this committee went on record recently as last week calling for that. I hope that we do it on the full floor of the House. It seems

that there may be no other way. I know your intentions are absolutely pristine and good, that maybe the atmosphere may open up the possibility. But I think the day that ascension occurs becomes a day that the left behind parents, whatever that number is on that day, is a day of mourning because it is more likely that the door just slammed right in their face. So if you could speak to that as well.

Ms. JACOBS. Thank you for all those questions, and we will try to address them.

In our discussions with the Japanese after they announced their intention to ratify the Hague Convention, we talked to them very specifically about taking reservations under section 139(b), which deals with domestic violence, and it was—I met with them. They sent delegation to the Special Commission of The Hague in June, and we had our side meeting with them about this and said how are you going to determine. And they said there would be a separate judicial hearing to talk about domestic violence before The Hague return hearing was held. And we made the point that there has to be provisions for the left-behind parent to be able to represent him- or herself at those hearings, and they agreed to that.

I think that there will have to be significant changes in Japanese law. We just had one of our Hague attorneys visiting in Japan, doing training with them, and he made those same points, and they seem to understand it. So I am hoping that all of these things will—the efforts that we are making in training and discussions with them will make a difference and make the exceptions that they take livable.

Now, many countries take exceptions to certain parts of the convention, as we did on providing free judicial assistance, and so we just have to make sure that the form of these reservations that they are taking doesn't interfere with the real intent of the treaty which is to get the children back to the United States.

Mr. SMITH. What about the other two provisions?

Ms. JACOBS. Now, on the criminal aspect of it, the Hague Convention does envision civil remedies, and I think that if there is a return, I mean, that is the best way for it to be—I don't know right now of any cases where—we are not—I mean, the State Department is not a law enforcement entity. So we have to rely on the FBI and then the FBI would have to go to Federal prosecutors to initiate a case. I am not aware that any cases are active right now. So I mean that—that isn't to say that there could be cases that are in the works, and so that is not something that I can really respond to.

Mr. CAMPBELL. If I could just be clear on that, Congressman, Ambassador Jacobs has been very careful here. I think that we would just simply say we are not ruling anything out and we have explored a lot of different options, and tomorrow in our private session we will be able to go over a little bit of that. But shall we say that we have looked at every case?

We have also been involved in, shall we say, an education campaign. Some of the problems that we have, frankly, are local law enforcement who don't fully understand some of the circumstances, and working with various regional law enforcement entities and judicial entities. We have explored a variety of options, and we just

want to underscore—and in diplomacy, when you say you are not going to take something off the table, there is a very clear intent associated with that, and I would just like to stand by that if I may.

Mr. SMITH. Here is the interesting thing, when you talk about the violence issue, if a court of competent jurisdiction in the United States had an enforceable order and allegations of violence were not asserted, of if they were, they were found to be infirm, does the court or would they contemplate that in Japan, they would take that all up like it is brand new ground or would, like in keeping with the spirit of the 1996 convention, look to enforce each other's court orders? Because that is a major—otherwise it starts all over with a potentially false allegation of violence that has to be adjudicated all over again, and if you heard from David Goldberg's case where there was no violence ever asserted but they used the courts or misused the courts for 5½ long years and, you know, to the tune of $0.5 million on his part.

Ms. JACOBS. The President signed the protection of a child convention in October, and we are exploring—I mean, we are working very actively with the Uniform Law Commission to figure out what implementing legislation we will need. This convention would be a great complementary convention to the abduction convention because it calls for recognition of foreign custody orders, and if there were a custody order, then we could present that and it would really eliminate so many problems.

Mr. CAMPBELL. It is a huge deal.

Ms. JACOBS. It would be done and so——

Mr. CAMPBELL. And that is our goal. That is our goal. Can I also say, Congressman, one other thing that we have tried to do—and again, thank the parents. Sometimes they come up with the most creative ideas and suggestions. And so in the immediate aftermath of this, you know, horrible tragedy, this, you know, tsunami, nuclear challenge that Japan has faced, some of the parents contacted us and said, look, you know, we are worried about the well-being of our family, of our children. And working closely with consular affairs, we made it so that every single one of those children could get a passport, American passport. Now, unfortunately that was not taken advantage of, but we are going to look to take creative steps both legal, procedurally, and the like.

It is also the case, if I may say—and I want to be careful about this. We have, in the last many months, had a couple of other cases where we have made progress where the particular parent has been reluctant to put too much attention on it for fear that there will be backtracking, and so I do think we are starting to get a critical mass both inside the Japanese Government, certainly in the U.S. Government.

And if I can just conclude with this one thing, Congressman. I mean, the biggest surprise in my job, when I was in the Pentagon at the lower level 10 years ago, I had a lot of people that were interested in foreign policy and a lot of, you know, issues. I don't see very much of that today. I see a lot of insular congressional focus, even—and this is not just about American livelihoods, but it is also about how we interact with the world.

I would love to have more people like you and Congressman Payne focused on this, but I don't see as much as I would have anticipated.

Mr. SMITH. Well, one way of doing that is reaching out to those Members of Congress, House and Senate, when there is an abducted—I mean, really tell them how much value-added that potentially could be. We would have more Members here, I think, if they had someone in their district who all of the sudden it becomes very real and very personal to them and if you could speak to—because you didn't answer the question on that, the final question about the MOU.

Mr. CAMPBELL. Yeah. I will say honestly, Congressman, almost every hearing is like this. So I don't—I wish—I hope you are right, and I would like to see that, and I think we will take further steps, but I find in general—that is the general issue.

We have had some discussions. From the Japanese perspective, it is a complete nonstarter, and the key here is the letter "U," understanding. It requires a degree of partnership and engagement on the Japanese side. Their view is that we are going—we are addressing this according to your concerns. You have asked us to work on the issues associated with Hague. We have indicated that we need to see progress on existing cases, but on this particular issue, they are not prepared to go down this path. They said, look, we are better—we are better to focus on these other matters and think in many respects——

Mr. SMITH. Again, Madam Secretary, and Dr. Campbell, what is our position? Is it our position to push for an MOU in a bilateral agreement?

Mr. CAMPBELL. If we could get an agreement with the Japanese Government to return these children, we would have gotten—we would have sought it years ago.

Mr. SMITH. But are we pushing for that agreement at the highest level? I know we pushed for Hague, and kudos for that, but again, the day they sign is a bittersweet day for the left-behind parents because by definition they are excluded because it is often date of entry into force onward and the door closes behind them. I mean, the idea is that the Japanese should say all in, we are all in, we mean it, and it is a test of their sincerity, frankly.

Ms. JACOBS. I think we have always pursued two tracks, both of which are incredibly important. One was getting these children returned to the United States and the other is Hague. And we are not going to give up on getting the children back to the United States, and we will figure out a way to do it.

Mr. SMITH. Thank you. Mr. Payne.

Mr. FRANK. Could I, Mr. Chairman, and I apologize but I have been—if you just give me 1 minute, Don.

I have some questions I will submit in writing to Ambassador Jacobs because I can tell they are not going to be answered publicly. It has to do with law enforcement. I mean, I want to get to the issue—in some places, we have clear-cut violations of the law, and I understand you are not the FBI, but I am going to submit some specific questions both about extradition and about visa revocation for people who have been involved.

But I would suggest, too, Mr. Chairman, I think probably this is an intracommittee thing, and I think it would probably be useful if this subcommittee, which has been the leader in this, would be to talk to our colleagues in Judiciary and have a joint confidential briefing of those of us who are interested, and let's pursue the case of extradition. Let's pursue the case of visa revocation letters.

I understand I am not going to get public answers because I am talking about some period of actions against individuals, but I would be glad to participate, and I am sure our colleagues in Judiciary would, and we would ask for a private briefing so we would have no holds barred. And I just want to put people on notice, I want to know who you are trying to extradite and why not, if not, and what about visas and what about other very specific sanctions.

Mr. Chairman and Mr. Payne, thank you very much for accommodating me.

Ms. JACOBS. We would welcome that opportunity, sir.

Mr. PAYNE. Thank you very much. I know that there is a time constraint and the witnesses wanted to be out by 4 o'clock. So I see that if that is the case, I need to stop now, but I will be brief just in order for you to meet other commitments that you may have.

I just might ask you, Ambassador Jacobs, as you note in your testimony, the Office of Children's Issues in the U.S. Central authority for incoming and outgoing applicants pursuant to the Hague Convention. In 2010, the State Department's Office of Children's Issues reported 1,495 international custody and access cases involving 2,123 children. This is twice the number of cases reported in 2006, and if indeed we start to really circulate memorandums or Dear Colleagues asking Members of Congress, do you have any concerns and issues, we would certainly assume that there would even be a quantum leap in the number of cases.

So my question is how is the budget, and as you may know, there are proposed cuts in this area. And do you—one, do you have the ability to handle the number of cases now in this U.S. Central authority to the children's issue group, and with the expectation that there will indeed be a bump up just by virtue of their being more attention paid to this issue? We don't want to raise expectations and then you be unable to handle the load. I just wonder if you could deal with that for a moment, Ambassador.

Ms. JACOBS. Thank you for that question, sir. Because of the congressional limit on the number of cases that each officer can handle, we are able to hire to meet demand. The cases that are open are an accumulation from the last—these are all the open cases. The 1,491 children are the total cases that are still open over the years, and some of them—most of them are active and we try to talk to the parents, call them, make sure that they are still interested in pursuing a return.

But we always—you know, if we had more money, we could do more training. We could do more outreach. I mean, there are a lot of good things that we could do with additional funding, as could the permanent bureau of The Hague. So we welcome your interest and we will call on you to help us. Thank you, sir.

Mr. PAYNE. All right. Just another quick question.

Although the United States, Ambassador Jacobs, criminalizes international parental child abductions, we know other countries

do not, including several of the Asian Pacific region and that area. According to the State Department's Office of Children's Issues Web site, examples include Indonesia, Malaysia, the Philippines, and Thailand. So I guess my question is, to what extent, in your opinion, criminalization, or criminalizing international parent-child abduction an important policy tool and what are merits and limitations as an effective means to prevent, combat, and punish international parental abduction?

Ms. JACOBS. Thank you for that very difficult question. I think that I can understand why we have criminalized international child abduction. It is a crime. Other countries don't do it that way. In discussions, for example, that I had in India, I was told that it is impossible for a parent to abduct their child. And if countries would join The Hague, then we could work on civil remedies. We would be able to use diplomacy in order to get these children back. Having the criminal remedy on the table, I think, makes it difficult for some countries to cooperate with us, but that doesn't mean that we don't keep pushing them to do what they ought to do.

Mr. PAYNE. In that same regard, you know, evidently there are certain cultural differences around the world. That is an understatement. In some cultures evidently, the maternal part of the view of the family, just in general, that—or maybe just that a mother is the natural—if there is one parent, the natural movement is for it to be the mother. They are more compassionate supposedly; they will do a better job. It is the culture, in many instances, and so do—and either one of you could handle that. How much do you feel that there are just honest beliefs that their culture—I mean, I am not talking about criminality or anything, but just a normal divorce case, so to speak, in India or Malaysia, that culture would, do you think, have a way of creeping into the decisions, even if it is not intentional but it is just a matter of the culture?

Ms. JACOBS. Thank you for that. I do think it is cultural, and I suggest to people that they watch Kramer v. Kramer which shows that a father can be a loving, caring parent, and can do just as good a job raising a child as a mother can.

Mr. PAYNE. Even here in the United States in parental custody cases, you have almost got to be a Lady Simon Legree to not get the custody in a lot of instances.

Ms. JACOBS. Unfortunately, I think there is that bias and it still exists in many countries. In the Middle East, it is assumed that the mother will raise the child until a certain age, and then the custody goes to the father, and that can be another difficulty. But there are biases and that is why we like The Hague because it eliminates gender bias, and it is based on habitual residence of the child and eliminates a lot of those issues.

Mr. CAMPBELL. Just two things, Congressman. These are excellent questions, but first, on the issue of the legal status associated with child abduction—and I think Ambassador Jacobs is clear that sometimes in certain circumstances, that it has created some challenges with other countries. But it is also the case that almost all countries have specific jurisdictional issues and assignments associated with kidnapping, and it is those set of issues on which we be-

lieve that we can make substantial progress. That would be the first point.

The second is that, would that it be just maternal issues. In truth, in many societies, it goes even further than that. There are both maternal issues and there are also ethnic issues that come to play sometimes that overcome maternal issues. And so these are very complicated, very deep seated and hard to tease out and also hard to confront sometimes.

And to be perfectly honest, as the Ambassador indicates, there are many aspects of Hague that you would say, well, imperfect, but overall, it is a remarkably effective tool to address an issue that is going to grow in magnitude because the number of cross-national marriages has increased dramatically in the last decade, and will again in the next decade.

Mr. PAYNE. Well, thank you very much. I think that it is important that we support international organizations like this, and I think that The Hague is the type that we would agree, although we are seeing somewhat of a growing move on some folks' philosophies that we withdraw from international groups. And so I think that if that trend tends to continue, we are going to find ourselves at a disadvantage with things like The Hague, and in my opinion, most international organizations tend do much more good than some other times when they are not as effective as we would like them to be.

But because of your time, I yield back and the chairman may have some other questions. Thank you.

Mr. SMITH. Just a few follow-ups. I thank you very, much, Mr. Payne, for your questions. If I could ask a couple of final questions, and I know you do have to leave, and I thank you for your patience.

Left-behind parents have received conflicting reports as to whether their specific cases have been raised by name with Japan. One left-behind parent received a response to his inquiry that states the following, and I will just quote it. It is from an e-mail. We have the e-mail.

> "The State Department has not formally demanded the return of any abducted children. As you know, one of the challenges inherent in resolving parental child abduction cases is overcoming the differences in law between sovereign Nations. The policy of the United States Government is to use bilateral relations to press for ratification of, or compliance to, the Hague Convention and for non-Hague countries, such as Japan, to assist left-behind parents in obtaining access or return of their children."

Is this e-mail accurate? Do we raise specific cases with the Japanese, and do we then report to the left-behind parent as to what it is that was gleaned from those conversations?

Ms. JACOBS. Yes, sir, we do. We do raise individual cases with the permission of the parents, and then we report back to them.

Mr. SMITH. Is that done for each parent?

Ms. JACOBS. It is up to the parent. I think some of the parents have asked us not to raise their individual cases.

Mr. SMITH. So everyone who wants their case raised by name with the Japanese Government, and who are your interlocutors?

Mr. CAMPBELL. I am not a consular official, but I have been in many, many, many, many, many meetings where cases have been made directly at very high levels, and so it is very hard—I don't know who that e-mail is from. I don't know what it is referring to. All I can tell you is I have sat watching either our Ambassador in Japan or a consular official go through the particulars of a particular case, not with a—you know, with a legal person but a higher level political person in Japan in order to make an important point that these are not just faceless people, you know, just statistics, that we have real people behind these cases.

Mr. SMITH. The person at OCI is Courtney Houk, and I am not sure what she means by has not formally demanded the return of any abducted children.

Mr. CAMPBELL. I don't—I don't know. I can't——

Ms. JACOBS. We will find out, and we will get back to you.

Mr. CAMPBELL. I don't know what she means.

Ms. JACOBS. We will get back to you on that.

Mr. SMITH. Let me, if I could, in your testimony, you point out 123 active abductions involving 173 children. That is 17 more children just than just 2½ months ago. Is that because more children have been abducted or new cases have just come into the office or what?

Mr. CAMPBELL. I think I can answer that, but one of the things that I think we found generally when we started looking at these cases is that the database was not uniform. A lot of cases had sort of fallen off, and so Janice's organization, consular affairs, all of our people in Tokyo have made a concerted effort to contact every single person we can and try to figure out what are the active cases. It is my belief that those cases reflect a greater precision of what the nature of the existing pool is, not new cases in the last 3 months.

It is also the case that there are some families, some separated families that were not aware of some organizations, not aware, and because of publicity, again a good thing, that they have joined in this overall effort. So I think that is the primary—I don't believe there has been any new cases of note over the course of the last 3 or 4 months, not that I am aware of.

Mr. SMITH. Just two final questions. Michael Elias' ex-wife has denied any welfare or whereabouts—visits with the children. In that case, or in any other like it, what do we do next? He doesn't even know——

Mr. CAMPBELL. I totally understand. I completely understand. I mean, there is several—I mean, very difficult case like this, Congressman, the truth is you have to work on many fronts. The first front is, again, try to establish the larger overarching legal framework, which is The Hague, establish the framework and then work on the corresponding implementing language.

We press Japanese authorities who are in touch with various taking parents to very assertively make the case about—yes, can I just tell you I have just been informed and I apologize for this, that the nuclear crisis did cause some left-behind parents to get back in touch and we reopened some of those cases. So that—I

think—that I think is what I was trying to say in terms of these are cases that have already been—that have been in the works or had been around for many, many years, but they are reopened because of the nuclear case, but I don't think there has been anything new—not a new abduction.

Mr. SMITH. Were the children minors throughout?

Mr. CAMPBELL. I don't know the nature, but I did want to give you accurate information on that.

So let me just say that it is also the case that we find that many of the taking parents have legal counsel in Japan. There are a group of lawyers that specialize in Japanese law, what their rights are and how to use aspects of Japanese law. Almost all of the most difficult cases we have found, or many of them, involve legal advice that while technically accurate within the Japanese context is frankly extraordinarily unhelpful, and we have also asked Japanese authorities to look carefully at some of these activities as a whole.

The truth is, Congressman, cases like this are just a tragedy and we are applying—I think we are trying to make clear to you—we are trying to apply every possible tool, including some legal issues.

Now, the truth is we have made clear to Japanese colleagues and friends that we are going to look carefully at all avenues and that they need to understand the urgency and that outrage is growing on Capitol Hill, indignation, not just among the parents but a much broader group of the American people and the electorate and in the executive branch. And they have a chance to do this under the right conditions, right, in the spirit of partnership, of humanity, of a strong bilateral relationship.

But ultimately, I come down where Congressman Frank indicates, that in a case where the clear-cut needs of American families come to play, then we are going to have to take a very hard look, and I must say, I am not ashamed about the steps that we have taken in support of the Japanese abductees, but I think our parents have a right to say, look, let's expect the same thing in return. And we make that point in almost all of our meetings, very different circumstances obviously, but we want the same compassion and commitment from Japanese colleagues.

Mr. SMITH. I will just conclude with this and throw it at you one more time on the bilateral agreement as to whether or not you would consider establishing a special court that would adjudicate these cases? I mean, this is a festering sore that will only grow, and I hope the Japanese Government understands it. We are close friends and allies, but this is a human rights abuse against American children and American left-behind parents.

I will continue to push hard for H.R. 1940, and it is a matter of when and not if that I believe we will get that enacted, and I say that because there needs to be penalty phase. Friends don't let friends commit human rights abuses whether it be human trafficking, religious freedom, or any other abuse. It is the Hague Convention, and its genesis shows clearly parental abduction is child abuse. It hurts the child, more than anyone else injures the left-behind parent, but it hurts the child. I know you know that and I know you know that well.

I do believe there needs to be a penalty phase at some point for a country, ally or not, that continues its obstinacy with regards to this. So I would ask you to—I am not sure who has made the decision to accept no as no, but if the Secretary of State, President Obama, if you, who deal with this issue every day, could work it to try to turn that no to a yes for a bilateral agreement, otherwise I have a sense of fright—and I talk, like you, to the left-behind parents. They sense when that door closes it will not create an atmosphere that will resolve the older cases. They will be grandfathered in as older cases, cold cases that don't get resolved.

There may be an exception somewhere, but I think human nature being what it is, time and delay is denial. Those children will grow. They will be 21, 30, who knows what it will be, they will get to see Mom or Dad then, but these are these years that are irreplaceable.

So I ask you, please, push for that bilateral agreement, special court, call it whatever you want, or whatever modality you choose, but there needs to be a process and an agreement between our two countries. Otherwise, there needs to be a penalty phase, and because they are getting away with abduction. So if you want to respond to that.

Ms. JACOBS. I don't think the door's ever closed to trying to reach an agreement on this. I think there are a number of ways that we can try to do it. One of them is in changes in Japanese domestic law that they will need to make anyhow in order to join—to ratify the convention, and we can encourage them to include the older cases in this ratification.

Mr. SMITH. But, again, I would hope that President Obama would talk to the Prime Minister and say solving these cases—and it will take, I think, a mechanism—it won't happen by just, say, a wave of the arm or the wand. So make that, you know, his major talking point in his next meeting.

Mr. CAMPBELL. Let me just say we have had great success in—Secretary Clinton has made this a major issue with her various meetings with the Japanese foreign minister, and we do agree that this has to be an issue that is raised at the highest level in our Government. It is also the case, frankly, that we underscore to Japan what a success story looks like, and the most recent one was really in the Clinton administration.

We had a huge problem with Germany, lots of pressure. President Obama—President Clinton went, worked with the German Government. We now have a much, much better situation, and I will underscore that many of those preexisting cases were dealt with.

And so we understand—I don't know how else to say this, Congressman—that it is not enough just to work on going forward. It has to be—it has to involve the existing. When you say "preexisting cases," it sounds so antiseptic—the ongoing crisis and the enormous challenge that these families are facing right now, and we expect that those issues will be dealt with. I don't know how else to say it, and frankly, I really—every single possible thing we are doing right now, we are doing, at least at my lowly level I am doing.

Mr. SMITH. As you know so well, every day of continued unlawful retention is another day of abuse. Mr. Payne.

Mr. PAYNE. Just a quick closing comment. We have heard, and you talked about the great success breakthrough finally in Germany. We are at loggerheads here and Japan. So evidently, the countries where we have the largest number of these cases are countries where we have had military installations and marriages between U.S. GIs and the current population.

Since we are having a 10-year war in Iraq and less than that in Afghanistan, I just wonder whether, is the nature of these rotations and wars and the manner in which war is conducted today different, and therefore, we don't necessarily have to anticipate that 2 or 3 years from now we are going to see two additional countries where we are starting to come up with a lot of clashes and loggerheads? How is the current conflicts we find ourselves in, in your opinion, leading to the situation whether because of the difference in the manner in which we—war is waged, we may not have the same problem?

Mr. CAMPBELL. Yeah. First of all, just two things, Congressman Payne. In truth, most of the abductions are to Canada and Mexico, just as a starting point; and secondly, the nature of the conflicts in Iraq and Afghanistan are such that there is not the kind of, you know, off-time fraternization mingling that we see in circumstances where you are at peace but living, you know, in another country and out on the economy. So I don't anticipate this problem in many places, for a variety of reasons, in the Middle East. Okay.

Mr. SMITH. Thank you. I want to thank our distinguished witnesses, Dr. Campbell and Ambassador Jacobs, for your testimony. Look forward to working with you going forward.

I do ask unanimous consent that members of the subcommittee have 5 days to revise and extend their remarks and submit—and we will submit some additional questions. Mr. Payne might have some additional ones as well on a number of other countries that we have concerns about. So I thank you and this hearing is adjourned.

[Whereupon, at 4:35 p.m., the subcommittee was adjourned.]

APPENDIX

Material Submitted for the Hearing Record

SUBCOMMITTEE HEARING NOTICE
COMMITTEE ON FOREIGN AFFAIRS
U.S. HOUSE OF REPRESENTATIVES
WASHINGTON, D.C. 20515-0128

SUBCOMMITTEE ON AFRICA, GLOBAL HEALTH, AND HUMAN RIGHTS
Christopher H. Smith (R-NJ), Chairman

July 21, 2011

You are respectfully requested to attend an OPEN hearing of the Committee on Foreign Affairs, to be held by the Subcommittee on Africa, Global Health, and Human Rights, to be held in **Room 2172 of the Rayburn House Office Building (and available live, via the WEBCAST link on the Committee website at http://www.hcfa.house.gov):**

DATE: Thursday, July 28, 2011

TIME: 2:00 p.m.

SUBJECT: Improving Implementation of the Hague Convention on the Civil Aspects of International Child Abduction

WITNESSES: The Honorable Susan Jacobs
Special Advisor for Children's Issues
Bureau of Consular Affairs
U.S. Department of State

The Honorable Kurt Campbell
Assistant Secretary of State
Bureau of East Asian and Pacific Affairs
U.S. Department of State

By Direction of the Chairman

The Committee on Foreign Affairs seeks to make its facilities accessible to persons with disabilities. If you are in need of special accommodations, please call 202/225-5021 at least four business days in advance of the event, whenever practicable. Questions with regard to special accommodations in general (including availability of Committee materials in alternative formats and assistive listening devices) may be directed to the Committee

COMMITTEE ON FOREIGN AFFAIRS

MINUTES OF SUBCOMMITTEE ON *Africa, Global Health, and, Human Rights* HEARING

Day *Thursday* **Date** *July 28, 2011* **Room** *2172*

Starting Time *3:00 p.m.* **Ending Time** *4:35 p.m.*

Recesses *0* (____to ____) (____to ____) (____to ____) (____to ____) (____to ____) (____to ____)

Presiding Member(s)

Rep. Chris Smith

Check all of the following that apply:

Open Session ☑
Executive (closed) Session ☐
Televised ☑

Electronically Recorded (taped) ☑
Stenographic Record ☑

TITLE OF HEARING:

Improving Implementation of the Hague Convention on the Civil Aspects of International Child Abduction

SUBCOMMITTEE MEMBERS PRESENT:

Rep. Chris Smith, Rep. Donald Payne, Rep. Russ Carnahan

NON-SUBCOMMITTEE MEMBERS PRESENT: *(Mark with an * if they are not members of full committee.)*

*Rep. Barney Frank**

HEARING WITNESSES: Same as meeting notice attached? Yes ☑ **No** ☐
(If "no", please list below and include title, agency, department, or organization.)

STATEMENTS FOR THE RECORD: *(List any statements submitted for the record.)*

Prepared statement from Amb. Jacobs
Prepared statement from Dr. Campbell
Questions for the record from Rep. Smith (1a, 1b, 1c, 2, 3, 4, 5, 6)
Questions for the record from Rep. Carnahan (1-3)

TIME SCHEDULED TO RECONVENE _____
or
TIME ADJOURNED *4:35 p.m.*

Sheri Rickert
Subcommittee Staff Director

Question for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#1a)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Dating back as far as the data is available, please provide the following:

- The number of annual outgoing abduction cases involving American children taken from the United States (broken out by Hague and non-Hague, when available) and the number of children involved in those abductions.

Answer:

Since the Bureau of Consular Affairs' Office of Children's Issues (CA/OSC/CI) does not track cases based on nationality, the data provided is for all reported outgoing abduction cases.

Reported Outgoing Abduction Statistics for CY 2001-2010

Calendar Year	# of New Outgoing Reported Abductions	# of Children in New Outgoing Abductions	# of Children Taken to current Hague Countries (may not have been Hague at the time)	# of Children Taken to Non-Hague Countries
CY 2001	562	852	382	470
CY 2002	527	758	337	421
CY 2003	559	783	351	432
CY 2004	602	808	404	404
CY 2005	623	880	415	465
CY 2006	579	851	431	420
CY 2007	807	1213	557	656
CY 2008	1011	1512	918	594
CY 2009	1067	1505	934	571
CY 2010	1020	1491	973	518

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#1b)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question 1b:

Dating back as far as the data is available, please provide the following:

- The number of cases that were closed in those years as a result of a physical return and the number of children involved in those returns.

Answer:

Outgoing Abduction Return Statistics for CY 2001-2010

Calendar Year	Total # of Children Returned	# of Children Returned, Hague Cases	# of Children Returned, Non-Hague Cases
CY 2001	292	156 (53%)	136 (47%)
CY 2002	211	112 (53%)	99 (47%)
CY 2003	272	142 (52%)	130 (48%)
CY 2004	301	155 (51%)	146 (49%)
CY 2005	297	153 (51%)	144 (49%)
CY 2006	306	145 (47%)	161 (53%)
CY 2007	391	214 (55%)	177 (45%)
CY 2008	454	259 (57%)	195 (43%)
CY 2009	527	322 (61%)	205 (39%)
CY 2010	616	379 (62%)	237 (38%)

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#1c)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question 1c:

Dating back as far as the data is available, please provide the following:

- The number of cases closed for reasons other than a physical return and the number of children involved in those closures.

Answer:

Unfortunately, the Office of Children's Issues does not track this information.

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#2)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Please provide the total number of American children who have been abducted from the United States and are not known by the State Department to have been returned since the U.S. joined the Hague Convention in 1988. That figure should include cases that were closed by the State Department if the child was not returned at the time the case was closed. If possible, please break this figure out by Hague and non-Hague countries.

Answer:

The Office of Children's Issues does not have an electronic application that can produce the statistics requested. Abduction cases from the United States can involve children who are not U.S. citizens, and while we track all cases, we do not do so by the nationality of the child. The unresolved case listing contained in the annual compliance reports includes outgoing abduction cases that have been pending for 18 months or more at the end of the compliance review period. The children listed in this report have not been returned to the United States. The 2011 report and all past compliance reports are located on our website at http://travel.state.gov.

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#3)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Please provide a list of the Top 10 Hague and non-Hague countries (separate lists) sorted by number of outgoing abduction cases (also indicate number of children involved) over the last 10 years and also include actual return statistics for each country during the same time period.

Answer:

The Office of Children's Issues does not have numerical data for the top 10 Hague and Non-Hague countries for the requested time period. The following statistics of outgoing cases from 2007-2010 provide a sense of the overall picture of the top Hague and Non-Hague countries. Return statistics are not based on the type of return, but on the total number by year and country. For additional country statistics, you may visit our website at http://travel.state.gov. Note: The Office of Children's Issues collected data by fiscal year until 2010, when we began collecting data for the calendar year. Therefore, the 2010 data is based upon the calendar year whereas the data from all previous years listed below are based upon the fiscal year.

Countries with the highest incidence of reported abductions of children in CY 2010 taken from the United States (Non-Convention parties in red):

Country	# of New Reported Outgoing Abductions	# of Children in New Reported Outgoing Abductions*	#of Cases Returned	# of Children Returned
1. Mexico	329	524	107	171
2. Canada	47	69	21	28
3. India	36	49	17	19
4. United Kingdom	35	57	14	20
5. Germany	27	40	13	20
6. Brazil	24	31	7	8
7. Japan	23	31	5	7
8. Colombia	21	23	9	9
9. Jamaica	15	19	8	10
10. Peru	15	16	6	7

*** The numbers in this column are larger because many cases involve two or more siblings simultaneously abducted by the TP.**

Countries with the highest incidence of reported abductions of children in FY 2009 taken from the United States (Non-Convention parties in red):

Country	# of New Reported Outgoing Abductions	# of Children in New Reported Outgoing Abductions	# of Cases Returned	#of Children Returned
1. Mexico	309	474	100	162
2. Canada	77	109	18	22
3. United Kingdom	50	75	21	27
4. Germany	48	69	6	8
5. India	35	42	6	8
6. Brazil	34	49	10	15
7. Colombia	23	31	7	8
8. Japan	22	32	5	8
9. Philippines	20	25	6	6
10. Australia	19	30	10	13

Countries with the highest incidence of reported abductions of children in FY 2008 taken from the United States (Non-Convention parties in red):

Country	# of New Reported Outgoing Abduction	# of Children in New Reported Outgoing Abductions	# of Cases Returned	#of Children Returned
1. Mexico	316	533	72	121
2. Canada	57	83	24	36
3. United Kingdom	42	53	10	11
4. Japan	37	57	1	1
5. India	35	45	10	15
6. Germany	34	49	9	10
7. Dominican Republic	25	39	8	16
8. Brazil	21	25	1	1
9. Australia	18	26	4	6
10. Colombia	17	22	9	10

Convention countries with the highest incidence of reported abductions in FY 2007 taken from the United States:

Convention Country	# of New Reported Outgoing Abductions	# of Children in New Reported Outgoing Abductions	# of Cases Returned	#of Children Returned
1. Mexico	195	320	72	124
2. United Kingdom	45	62	12	12
3. Canada	39	56	24	38
4. Germany	24	31	7	8
5. Brazil	20	31	4	6

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#4)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Please provide detailed description of how the State Department defines a return. For the 588 returned children in 2010, please indicate whether that number includes American citizen children physically returned to the United States on a permanent basis. For 2010 returns, please detail how many of those returns resulted from negotiated/mediated settlements or through court-ordered returns, in cases where the child was physically returned to the United States.

Answer:

The Office of Children's Issues defines a return as a child's physical return to the United States. A return may be voluntary or court-ordered. Parents continue to report returns that occurred in 2010: the current number is 616 children returned. The 616 returned children includes all abducted children, U.S. citizens and other nationalities, who physically returned to the United States in 2010. The Office of Children's Issues does not maintain statistics on the reasons for returns, but we believe that the majority of returns are voluntary and do not require a court order.

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#5)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question 5:

Please provide a list of the criteria the State Dept. uses for closing cases and detail whether all closed cases are included in return statistics or only those which resulted in a physical return of the children.

Answer:

The Office of Children's Issues closes outgoing abduction cases in the following circumstances:

a) a child turns 16 in a Hague case;
b) a child turns 18 in a non-Hague case;
c) the child is returned to the country of habitual residence;
d) the Left-Behind Parent (LBP) notifies the Office of Children's Issues that assistance is no longer required;
e) the child or LBP is deceased; or
f) after multiple attempts, the Office of Children's Issues is unable to locate or communicate with the LBP in order to obtain updated information or confirm that our assistance is still desired. (If the LBP re-establishes contact and desires continued assistance, the case can be re-opened at any time.)

Only cases that result in a return of the child or children, whether court-ordered or voluntary, are included in return statistics

Questions for the Record Submitted to
Special Advisor Susan Jacobs by
Representative Christopher Smith (#6)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Please explain why the 2011 annual Hague compliance report omits much of the statistical data contained in previous annual reports.

Answer:

In September 2010, Department senior management instructed staff to concisely address each factor that is statutorily required in a salient, factual narrative while highlighting new developments and ensuring that additional material was available on the internet. For example, Global Case Statistics, which are not required, had been included in the past reports. The Office of Children's Issues has now posted 2010 Global Case Statistics on our website at http://travel.state.gov.

Question for the Record Submitted to
Assistant Secretary Kurt Campbell and Special Advisor Susan Jacobs by
Representative Russ Carnahan (#1)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Ambassador Jacobs and Assistant Secretary Campbell, I would like to touch on the serious issue of parental child abduction cases involving Japan, but I would certainly also make a point to acknowledge the overall strength of U.S. – Japan relations, along with their strategic importance for our engagement in Asia-Pacific. And in the wake of the March earthquake and Tsunami, we have stood with the Japanese people as they overcome significant tragedy and loss. With respect to IPCA, however, Japan remains the only G-7 nation that has not implemented the convention. I'm encouraged that Japan has stated its intention to join the Convention, and I'd like to delve into some of the obstacles towards its ratification.

Specifically, could you please discuss the legal parental custody issues and domestic abuse concerns within Japan?

Answer:

We share your desire to see Japan join other G-7 nations in ratifying and implementing the Hague Convention on the Civil Aspects of International Child Abduction. The Japanese Cabinet's May 20 declaration of its intention that Japan become party to the Convention is a very encouraging first step. There is still much more work that needs to be done as Japan takes the necessary steps to enact this decision and implement the Convention in a manner that allows for effective partnerships with other parties to the Convention. We stand ready to assist Japan through this process.

Japan's cultural and legal traditions of awarding sole custody to only one parent have presented serious challenges to gaining public, and to some extent, political support for ratifying the Convention and for revising domestic laws to allow for visitation and access for the other non-custodial parent. Japanese courts usually deny custody requests by U.S. left-behind parents, who then must rely on the taking parent's cooperation to have any contact with their children. The Japanese Diet recently passed an amendment to Article 766 of its civil code regarding child custody and visitation, which may provide more flexibility in the issuance of custody orders. The previous language read:

> **(Determination of Matters regarding Custody of Child after Divorce etc.)**
>
> Article 766 (1) If parents divorce by agreement, the matter of who will have custody over a child and any other necessary matters regarding custody shall be determined by that agreement. If agreement has not been made, or cannot be made, this shall be determined by the family court.

(2) If the family court finds it necessary for the child's interests, it may change who will take custody over the child and order any other proper disposition regarding custody.

(3) The rights and duties of parents beyond the scope of custody may not be altered by the provisions of the preceding two paragraphs.

Here is an unofficial translation of the new language; specific additions have been italicized:

(Determination of Matter regarding Custody of child after Divorce etc.)

Article 766 (1) If parents divorce by agreement, the matter of who will have custody over a child, *visitation and other communication between the child and the father and mother, a share of the expenses required to take care of the child* and any other necessary matter regarding custody shall be determined by that agreement. *The child's best interests must be considered as the highest priority.*

(2) *If agreement has not been made, or cannot be made as mentioned in the preceding paragraph, this shall be determined by the family court.*

(3) If the family court finds it necessary, it may change the agreement made in the preceding two paragraphs and order any other proper disposition regarding custody of the child.

(4) The rights and duties of parents beyond the scope of custody may not be altered by the provisions of the preceding three paragraphs.

The explicit mention of "visitation" is significant in that it represents an apparent shift in attitude towards traditional beliefs about the non-custodial parent's role in a child's life. The court system has a grace period of one year to implement and enforce these changes, so it is too early to say how widespread an effect this amendment will have. We will continue to monitor action within the Japanese courts and hope this will help resolve current abduction cases.

As we have worked with Japan during the past several years to encourage ratification of the Convention, officials throughout the Japanese government have raised concerns that returning children under the Convention would result in forcing these children's Japanese parents (normally mothers) to return as well, potentially to abusive situations from which they claim they were fleeing at the time of the abduction. We explained to Japanese government officials that the United States has significant resources for domestic violence victims and our courts take abuse allegations very seriously. The premise of the Convention is that a child should not be wrongfully removed or retained. By establishing a return requirement, the Convention allows a judge in the country of habitual residence, who is in the best position to gather evidence and information to inform a custody determination that is in the child's best interests, to make such a determination. Japanese mothers who wish to relocate to Japan because of domestic abuse or any other reason, should file for sole custody in a U.S. court and receive judicial permission to move with the child.

Question for the Record Submitted to
Assistant Secretary Kurt Campbell and Special Advisor Susan Jacobs by
Representative Russ Carnahan (#2)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

Have other countries interpreted the Convention in a way to legitimize the concerns of the Japanese, or would you attribute these reservations to socio-cultural features of Japanese society?

Answer:

The Hague Abduction Convention provides a legal framework that allows for foreign nations to cooperate on resolving international abduction cases and takes into account that State Parties will have varying domestic laws, administrative procedures, and cultural attitudes that influence implementation. The Permanent Bureau of the Hague Conference on Private International Law has noted that "progressive implementation" of the Convention is to be expected as treaty partners work together and within their own governments to develop programs, policies, and laws that support the Convention as fully as possible There are many examples of countries that have become party to the Convention with less than perfect implementation and, as members of a community of like-minded countries, have grown much closer to the norms of the Convention partners. There are other countries that have been concerned about the Convention's potential impact on domestic violence victims, separation of a child from his or her mother, or possible criminal charges a taking parent may face upon return to a country that views abduction as a crime. While we are concerned that Japan might prevent the return of children beyond what we believe to be called for by the Convention, we will raise those concerns at the appropriate opportunity. The issues are not unique and come up frequently in bilateral discussions.

Question for the Record Submitted to
Assistant Secretary Kurt Campbell and Special Advisor Susan Jacobs by
Representative Russ Carnahan (#3)
Subcommittee on Africa, Global Health and Human Rights
House Committee on Foreign Affairs
July 28, 2011

Question:

How is the U.S. responding to these concerns, particularly those that are culturally sensitive? Overall, what do you believe are the prospects for ratification of the Convention in Japan?

Answer:

The Department of State has been working diligently to encourage the kind of legislative and other changes in Japan that would allow U.S.. children to maintain contact with both parents as well as Japan to ratify the Hague Abduction Convention. Our Japanese interlocutors have assured us that Japan is committed to ratifying the Convention, and we have observed tangible progress towards establishing a Central Authority and passing new laws in support of the Convention. The U.S. government has expressed its concerns about certain elements of the current draft implementing legislation in private meetings, and it has offered support and assistance as the legislation makes its way through the Diet in the coming months. The recent change of government in Japan reflects a change in leadership of the ruling party, not a change in the governing party, and, we do not anticipate the change will derail the ratification process. We continue to watch the draft language closely on the conditions for non-return, and our subject matter experts and their Japanese counterparts continue to discuss outstanding issues and questions.

