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Introduction
This PhD thesis deals with the application of the Hague Convention on the Civil Aspects of International Child Abduction (further, Child Abduction Convention) from the perspective of the best interests of the child. The research focuses principally on the application of the Child Abduction Convention in the Netherlands. The central question of this research is whether the application of the Child Abduction Convention does justice to the best interests of the child, and if so, in which way should it best be enforced. In order to answer this question the research was carried out from four different perspectives, each dealt with in a separate part.

The first part of this research aligns to an (history) elaboration of the Child Abduction Convention. It also contains a chapter exploring the concept of 'the best interests of the child'.

The second part of this research examines the application of the Child Abduction Convention in the Netherlands.

The third part explores the central research question as to whether the application of the Child Abduction Convention does justice to the best interests of the child, and if so, in what way from an international perspective. To this end, largely documents of the Hague Conference on Private International Law have been utilized.

In the fourth part, a non-legal approach is taken in order to explore individuals' (notably parents and children) experience of international child abduction and the practical application of the Child Abduction Convention to their case.

Finally, the fifth part contains conclusions and recommendations.

Part I: The background of the Child Abduction Convention and the best interests of the child as a principle in the application of this convention
The first part focuses on the historical and legal lead up to the Child Abduction Convention (the background and the circumstances) as well on its initial content. This part also explores the concept of 'the best interests of the child' as developed in the Convention on the Rights of the Child (CRC) that was promulgated almost simultaneously with the Child Abduction Convention and came into force in 1990.

Chapter 1 deals with the research subject; the central research question; the research method; and the structure of the thesis. Chapter 2 follows the legislative history of the Child Abduction Convention. Chapter 3 focuses on the contents of the Child Abduction Convention and the Explanatory Report simultaneously produced. Chapter 4 examines the concept 'the best interests of the child'. The final chapter, Chapter 5, contains the conclusion relating to the first half of the research question which indicates that during the development of the Child Abduction Convention and
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in the text of the Convention the attitude towards the best interest of the child concept was ambivalent.

 Nonetheless, in this context consideration should be given to the fact that it is difficult to always determine the specific content of the best interests of the child in the context of international child abduction, and moreover, how those interests should be judged. These problems are addressed in Chapter 4. In the end, it could be concluded that the best interests of the child were not the primary consideration during the development of the Child Abduction Convention. Therefore, not enough justice has been done to Article 3 CRC stipulation, requiring that the best interests of the child ‘shall be a primary consideration in any child-related matter’.

Chapter 2, for instance, shows that during the elaboration of the Child Abduction Convention the best interests of the child have played a role, but that this role was far from a leading one. Other interests like protecting rights of the left-behind parent; preventing of parents taking justice into their own hands and general principles such that rights of custody and access should be respected; appear to have considerable influence as well. The prevention of abduction, the protection of rights of custody and access, and a prompt return of the child to its home environment are – save some exceptional cases – in the best interests of the children as a group. However, the Child Abduction Convention has not been designed in a manner which could serve the best interests of the individual child involved in the best possible way. The first draft of the Convention did not even refer to the best interests of the child and in the final text there is only one reference to best interests in the Preamble of the Convention. A proposal to add a provision stipulated that the requested State is not bound to order the return of the child if this would be contrary to the best interests of that child, was refused by the majority of drafters. There has been no real discussion regarding the content of ‘the best interests of the child’ in the context of the Child Abduction Convention.

Chapter 3 shows that neither the provisions of the Child Abduction Convention nor the influential Explanatory Report of Pérez-Vera are governed by the notion of the best interests of the child. The author of the Explanatory Report finds it necessary to provide justification for paying attention, in certain instances, to the ‘best interests’ concept when speaking of the objectives of the Convention. Apparently, this was not an automatic response. Moreover, the Report shows that the true nature of the Convention is to prevent later (custody) decisions being influenced by a change of circumstances brought about by unilateral action of one of the parties. In addition, both the text of the Convention and the Explanatory Report demonstrate that the Child Abduction Convention is more concerned with preventing the abduction of children and protection of custody rights than with the best interests of each individual child. The Convention provides for some exceptions to the rule that the child should return to the place of its habitual residence, allowing the possibility to reject the return in some situations where such return is not in the child’s best interests. However, these exceptions are formulated in a rather restrictive way and they do not cover all situations where return is not in the child’s best interests.
Furthermore, the Explanatory Report points out that the intention of the drafters was that deviations from the rule should be applied only in (very) exceptional cases only. Consequently, some children will be sent back despite this being contrary to their best interests.

In brief, according to the first part of this thesis it could be concluded that the best interests of the (individual) child were not the primarily objective of the Child Abduction Convention. Thus, applying this Convention in such way that would do justice to the best interests of the (individual) child is no easy matter. This means that it is practically difficult to apply the Child Abduction Convention in such way that the best interests of the individual child would be a primary consideration, as Article 3 CRC prescribes.

Part II: The application of the Child Abduction Convention in the Netherlands

Part II of this research explores the way in which the Netherlands deals with cases of international child abduction in general, and more specifically, how it uses the Child Abduction Convention.

Chapter 6 contains the study of the ratification of the Child Abduction Convention by the Netherlands, the parliamentary history of the implementing legislation (Uitvoeringswet Internationale Kinderontvoering), and also the recent amendments of 2012. Chapter 7 surveys the way in which the Child Abduction Convention and other relevant international instruments, have been applied in the Netherlands. Thereafter, chapter 8 contains an extensive case law study. It includes a comprehensive investigation of relevant Dutch case law and a brief analysis of relevant case law of both the European Court of Human Rights (ECHR) and the Court of Justice of the European Union (CJEU). Chapter 9 summarizes several points of concern and suggestions for improving the application of the Child Abduction Convention, principally in the Netherlands, so that it can do justice to the best interests of the individual child. The conclusions of the second part are presented in Chapter 10.

The second part of the thesis supports the conclusion that the application of the Child Abduction Convention in the Netherlands only partly succeeds in doing justice to the interests of the child. From the perspective of the best interests of children, most of the changes in the application of the Convention during recent years could be considered as positive. There is growing attention for the plight of abducted children. Nevertheless, it is clear that more could be done to make the best interests of children a primary consideration in child abduction cases.

Chapter 6 reveals that during the ratification of the Child Abduction Convention and its implementation in the enabling legislation, Uitvoeringswet, the best interests of the child played little or no role. It was certainly not a primary consideration. During the discussion surrounding the amendments of the Uitvoeringswet in 2012, the situation was different. At that time there was significant concern for the best interests of the child. As result of these amendments, with the exception of the limitation of appeal in international child abduction cases, the application of the Child Abduction Convention...
and of the Uitvoeringswet can do more for the best interest’s principle of the child than previously.

The conclusion of chapter 7 is that in recent years the attention for international child abduction has grown both in the Netherlands and international context. The number of applicable international instruments in these cases has increased. Nevertheless, not every new provision does enough justice to the best interests of the child. Most of the changes occurring in the Netherlands, like the establishment of an International Child Abduction Centre (Centrum Internationale Kinderontvoering) and the concentration of jurisdiction into the hands of one District Court and one Court of Appeal, however, do allow greater room for the best interests of the child to take precedence.

Chapter 8 implies that so far, case law of the European Court of Justice has had little influence on the application of the Child Abduction Convention and the extent to which the application of the Convention meets the criteria of the best interests of the child. However, the case law of the European Court of Human Rights does have significant influence. Nonetheless, case analysis shows that the Court does not always see the best interests of the child as a priority. This observation equally applies to Dutch case law. That said, one should note that Dutch judiciary do take into account the best interests of the (individual) abducted child. During recent years all of the exceptions to the default rule provided under the Child Abduction Convention that the child be promptly returned to the country of its habitual residence, with the exception of Article 20, have been used frequently. Albeit, not in such a way that it undermines the application of The Hague Convention with its starting-point that return is in the best interests of the child.

Even though several points of concern have been recently solved further improvement is possible as can be deducted from chapter 9.

In short, despite the fact that the application of the Child Abduction Convention in the Netherlands during the past few years has promoted the best interests of the child, the author, acknowledging the various positive developments in the application, advocates that it is possible to do even more justice to the best interests of the child when applying the Convention. Therefore, the Netherlands should aspire to further improvement. Such improvement could be achieved both on a national and an international level.

Part III: Suggestions for improvement of the application of the Child Abduction Convention in the direction of doing more justice to the best interests of the child from an international perspective

The third part of this research contains just one chapter that deals with the same central question of this research – whether the application of the Child Abduction Convention does justice to the best interests of the child, and if so in which way should it best be enforced – from an international perspective. Chapter 11 demonstrates that there is a lack of uniformity in (among other things) the interpretation of the Convention that stands in the way of further improvements. Some Contracting States
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give greater weight to the best interests of the child than other Contracting States. Therefore, in the best interests of the child, the interpretation of the provisions of the Convention should be clarified and interpreted in a way that the best interests of the child are seen as a priority.

Part IV: Experiences of those concerned
The fourth part of this research contains just one chapter that deals with the same central question of this research – whether the application of the Child Abduction Convention can do justice to the best interests of the child, and if so, in which way should it best be enforced from the perspective of people who have experienced an international child abduction case. Chapter 12 describes causes as well as consequences of international child abduction; more specifically, for children and parents who have experienced international child abductions and the application of the Child Abduction Convention in relation to their cases. Child abduction appears to have a negative influence on the life of the child in nearly all cases. If the application of the Convention leads to the return of a child, this often does not solve the problems. Usually, both in a mental and material respect, the situation cannot go back to the status quo, before the abduction occurred. Therefore, one should press for the prevention of abduction. During the return of the child, and thereafter, some factors are identified and having an influence on the harmful effects of the abduction to the child to some extent. The author advocates taking these factors into account to do more justice to the best interests of abducted children.

Part V: Conclusion and recommendations
Part V consists of Chapter 13 containing the conclusion of this research and recommendations. To the (sub-)question, whether the application of the Child Abduction Convention both in the Netherlands and abroad is capable of doing justice to the best interests of the child, the answer is generally yes. The Convention encourages the return of abducted children to their familiar surroundings and as a result several rights of the child are successfully protected. As time has passed, the scope of the Convention has extended; nowadays, there are many Contracting States. From the perspective, in which way justice can be done to the best interests of the child in the application of the Convention, however, e.g. in the Netherlands not enough justice has been done for these interests. If – pursuant to article 3 CRC – the best interests of the child ought to be a primary consideration, the (history of the) development of the Child Abduction Convention and its text show that these interests did get not enough precedence. That is one of the reasons why during the application of the Child Abduction Convention in individual cases sometimes, insufficient attention is paid to the best interests of (individual) children. In the Child Abduction Convention, the objectification of the best interests of the child as the swift return of the child does not turn out to be the best solution for each individual abducted child. In addition, due to several developments in recent years, application of the Child Abduction Convention should be recalibrated at certain points. This is equally valid for
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the application of the Convention in the Netherlands, as well as for the application from a global perspective.

To achieve an application of the Child Abduction Convention which does more justice to the best interests of the child, this thesis leads to the following recommendations.

The first nine recommendations relate to the (international) interpretation and content of the Child Abduction Convention.

1. With regard to the interpretation of Article 12 (2) of the Convention about the settlement of the child in its new environment, the period of one year mentioned in that provision should be abandoned. Judges should investigate if the abducted child is settled in its new environment, at any time.

2. The exception of Article 13 (1) b) of the Convention (grave risk/intolerable situation) should be interpreted less restrictively in an attempt to overcome situations where a return is not in the child’s best interests.

3. To prevent an interpretation of Article 13 (1) b) of the Convention that is too extensive, thereby becoming a hollow concept (see recommendation 2) and also generally undermining successful application of the Convention, in unique situations, Article 3 CRC should be applied to refuse the return of an abducted child.

4. After some time has passed, Contracting States should accept that the requested State becomes the State of habitual residence of the abducted child because the prompt return of the child can no longer be ensured, the status quo cannot be re-established and the requesting State will be no longer in the best position to judge the best interests of the child.

5. Contracting States should provide for a procedure, within a short period after the return of an abducted child, in which further decisions with regard to the child are taken. This could guarantee that after the return of a child, the best interests of this child in the long term will be actually considered in a procedure.

6. The court that orders the return of a child should have the possibility to add conditions and/or protecting measures to protect the child (and if necessary the accompanying parent) that are valid until, after the actual return of the child, a (judicial) decision of the State of habitual residence has put into place. Judges should have this opportunity in order to advance a successful and safe return of abducted children.

7. A large-scale international case law based survey should be instituted to find out, from the perspective of the best interests of the child as primary consideration, which legal interpretation of the Child Abduction Convention is most appropriate.
Subsequently, a new (updated) Explanatory Report to the Child Abduction Convention should be developed. Such a report could contribute to an application of the Child Abduction Convention by the Contracting States which can successfully advance the best interests of abducted children and improve uniform interpretation of the provisions of the Convention.

8. It would be useful to carry out (empirical) research concerning the consequences of child abduction upon abducted children. The results of this research could be used to improve the application of the Convention in a way that, to a larger extent, justice could be done for the best interests of the child.

9. Contracting States should consider the development of a protocol with regard to the (practical) application of the Child Abduction Convention in order to avoid practical problems during and after the return of abducted children.

The following five recommendations apply to the Child Abduction Convention in the Netherlands, but the first recommendation is important for some other States as well.

10. Article 11 (4) and (6), (7) and (8) of the Brussels II bis Regulation could be deleted. Since this provision of the Regulation is supplementary to the Child Abduction Convention, it directly affects the application of the Convention in the Netherlands. The above-mentioned additions in Article 11 of the Regulation do not do justice to the best interests of the child. Article 11 (4) reduces the opportunity of refusing an application for return using Article 13 (1) b) of the Convention. That could be at the expense of the prompt return of children, because judges should investigate if adequate arrangements to secure the protection of the child after his or her return could be established in the requesting State. Article 11 under (6), (7) and (8) on the basis of which an order of non-return, pursuant to Article 13 of the Hague Convention by the court of the requested State, could be overruled by a new decision in a procedure in the State where the child was habitually resident immediately before the wrongful removal or retention, does not appear to be in the best interests of the child, either. The extension of the period of uncertainty for the child and its parents and because after this new (lengthy) procedure a prompt return of the child can no longer be ensured are some other concerns.

11. In the case of an abduction to the Netherlands from a State that is not party to the Child Abduction Convention, the exceptions to return in that Convention should be applied in a less restrictive way. For example, where the return of the child is not in its best interests since the custody decision that was taken in the requesting State (that lays down the basis on which the application for return was lodged) was not adequately based on the best interests of the child. Also, since a restrictive application is not grounded, as in these cases, there is no cooperation between Central Authorities.

12. In the best interests of the child, the opportunity of regular judicial review, cassatieberoep, to the Supreme Court, Hoge Raad, should be re-established. The nature of
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judicial decisions to return or not to return a child – having considerable influence on the Article 8 of the European Convention of Human Rights right to family life and having a huge influence on the (further) development of the child – justifies an examination by three courts and no limitation of appeal. The Supreme Court, Hoge Raad, should offer an expedited procedure in those cases.

13. At least once in every five years, the application and implementation of the Child Abduction Convention in the Netherlands should be (thoroughly) evaluated in order to adapt the application if necessary. In that way the application of the Child Abduction Convention can do more justice to the best interests of the child.

14. The Netherlands should provide better support for abducted children. The abduction itself as well as the return of the child after abduction has far-reaching effects upon the life of a child which may harm its development. Support and aftercare could possibly reduce that harm. The Netherlands could institute a pilot programme in which children abducted to the Netherlands receive support. In addition, abducted children (and their parents) returning to the Netherlands should ordinarily be offered support and/or aftercare.

Last but not least, there are recommendations stemming from this research that do not influence the application of the Child Abduction Convention and/or the best interests of abducted children directly. Therefore, in the light of the central question of this thesis, these recommendations are less relevant and on that account are not discussed in this summary.