



***Quo vadis* 1980 Hague Child Abduction Convention?**

A view from The Hague

Antwerp, 16 October 2014

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First Secretary

Hague Conference on Private International Law



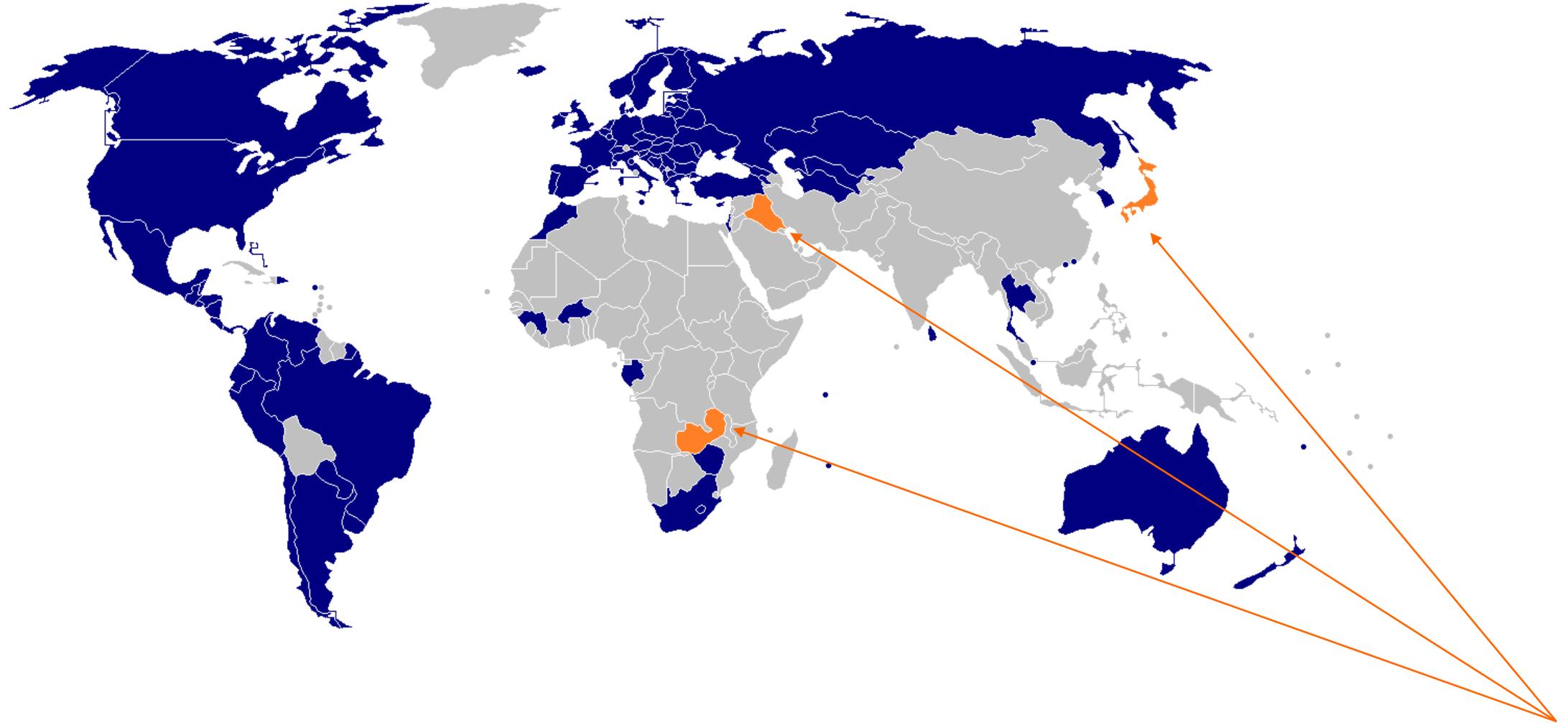
Some facts & figures

Some Facts & Figures – No 1

**The global impact of
the 1980 Hague Child
Abduction Convention**

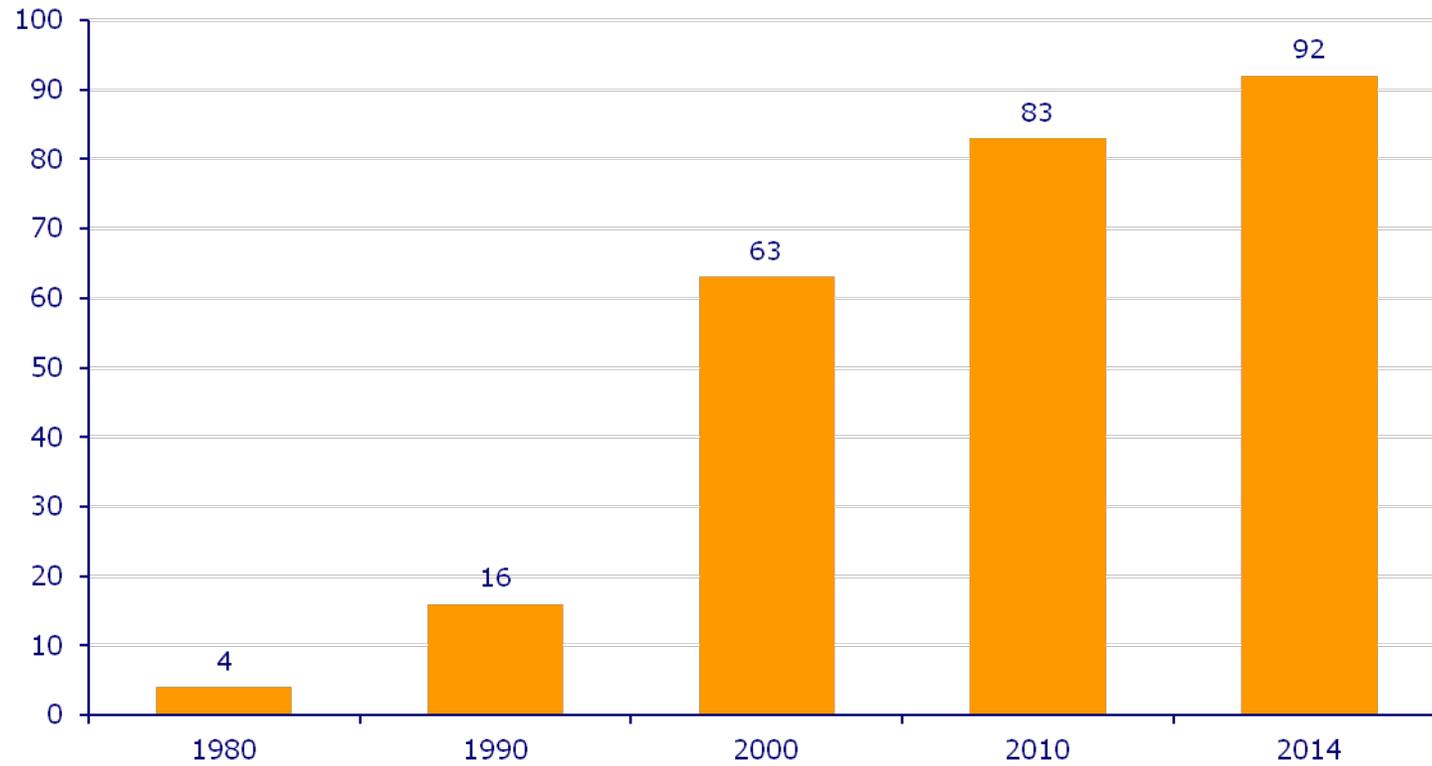


The Convention continues to attract new Contracting States



New Contracting States in 2014: Japan, Iraq & Zambia

Continuous growth in the number of Contracting States



A success story?

The 1980 Hague Convention:

- Protects the rights of wrongfully removed children
- Guarantees assistance by competent authorities to the left-behind parent
- Secures international co-operation (judicial and administrative) on the basis of a shared legal structure
- Relieves consular authorities
- Limited but essential goal (return of the child) and efficient procedure to attain it

Some Facts & Figures – No 2

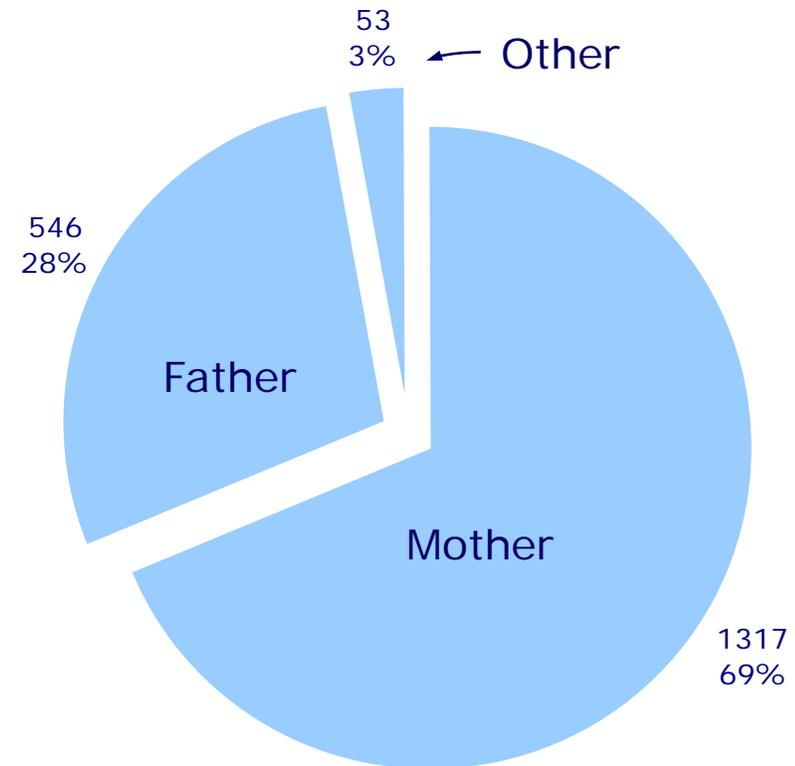
Child abduction:

a moving target

Nature of abductions

A moving target

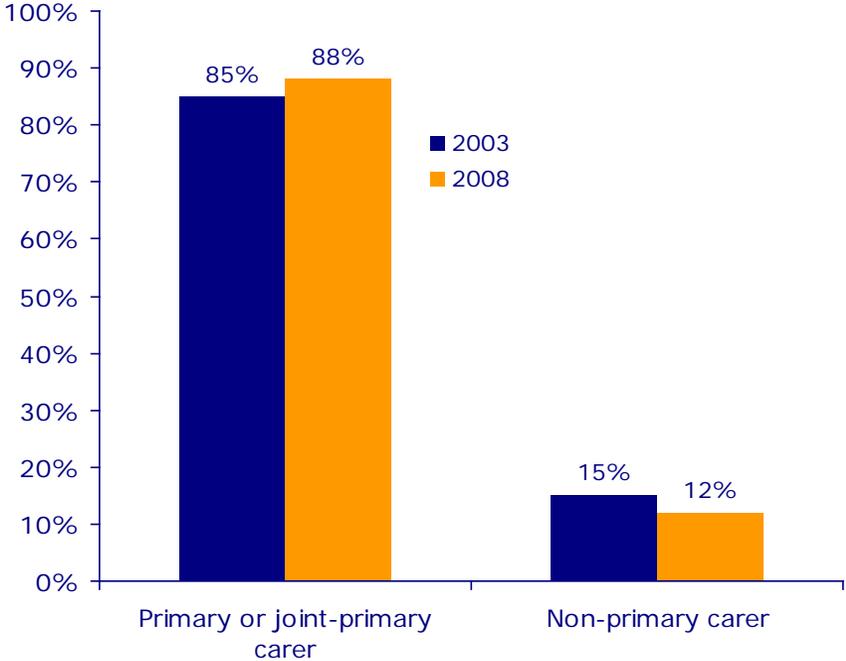
- 1980 – taking parent not the primary caregiver (most frequently the father)
- 2008 – 70% of taking parents are the primary caregiver (most frequently the mother)



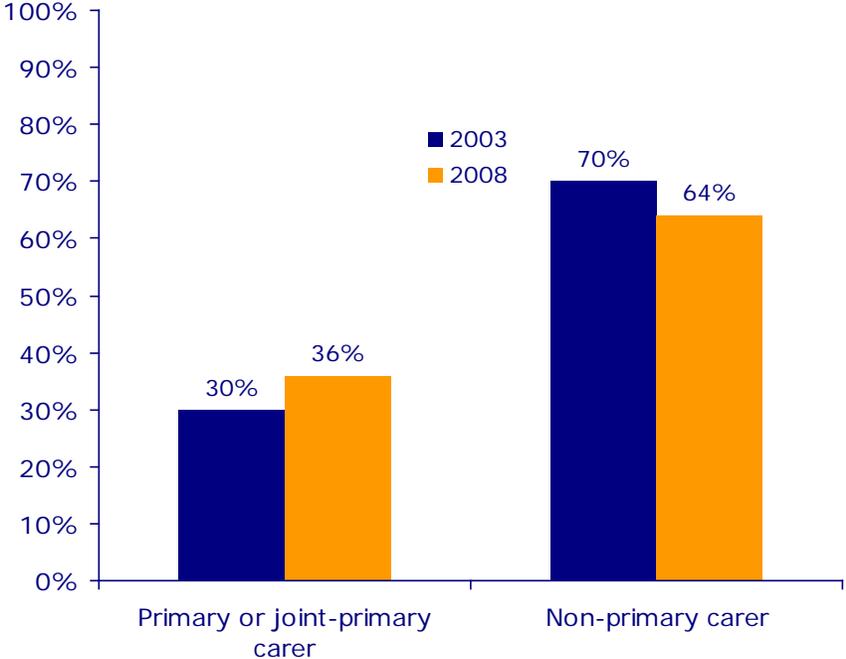
Relationship between the taking parent and the child

Nature of abductions

A moving target



Mother

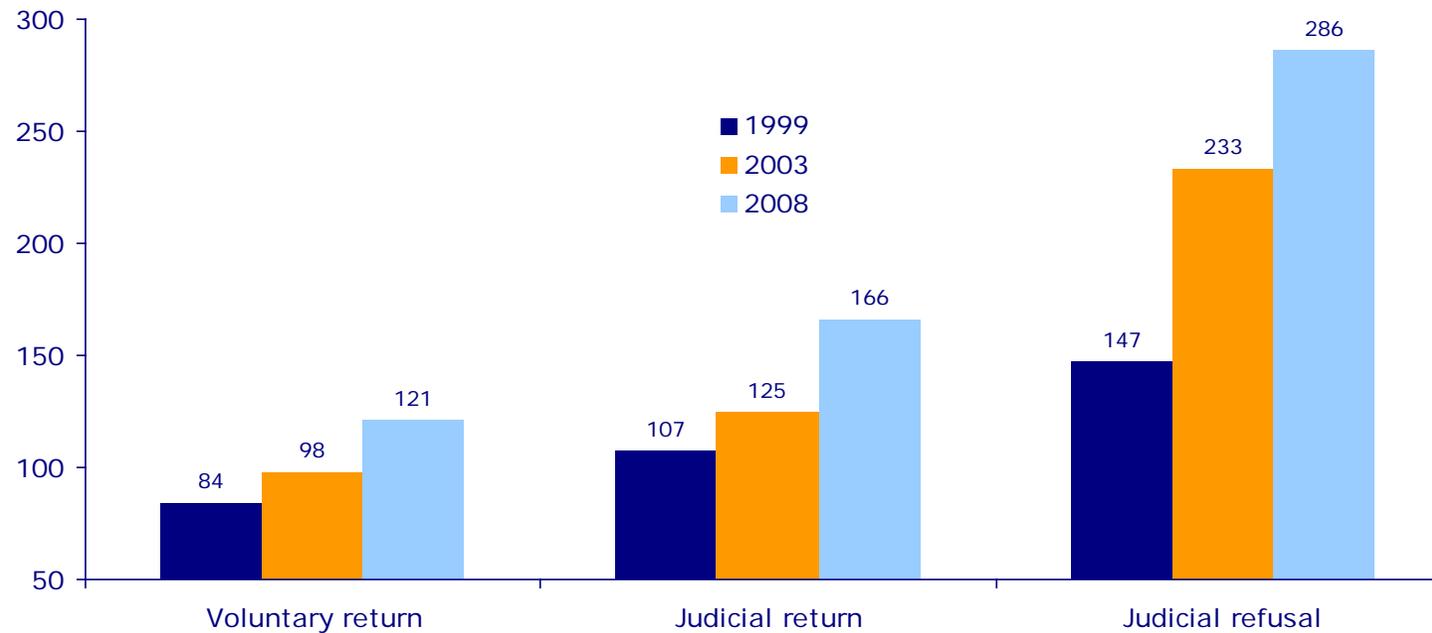


Father

Expediting proceedings?

A moving target

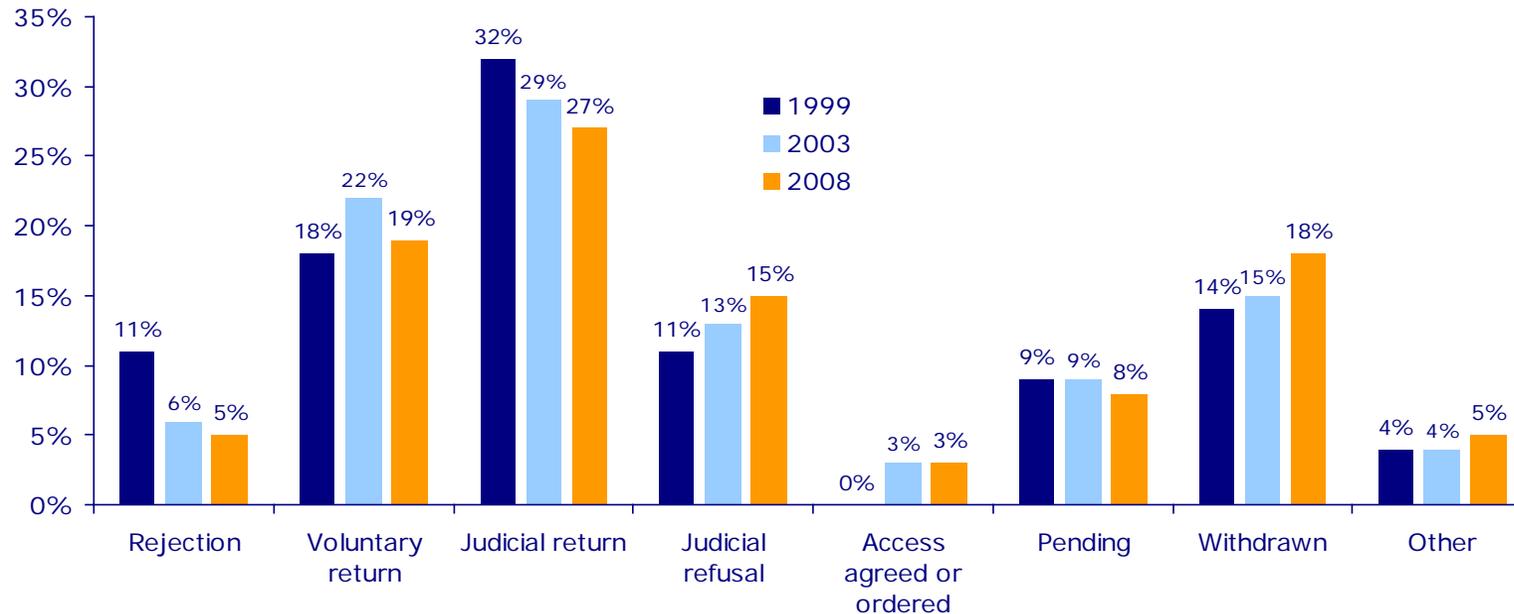
Longer time periods to process applications



Number of days taken to reach a final conclusion

Court / out of court settlements? A moving target

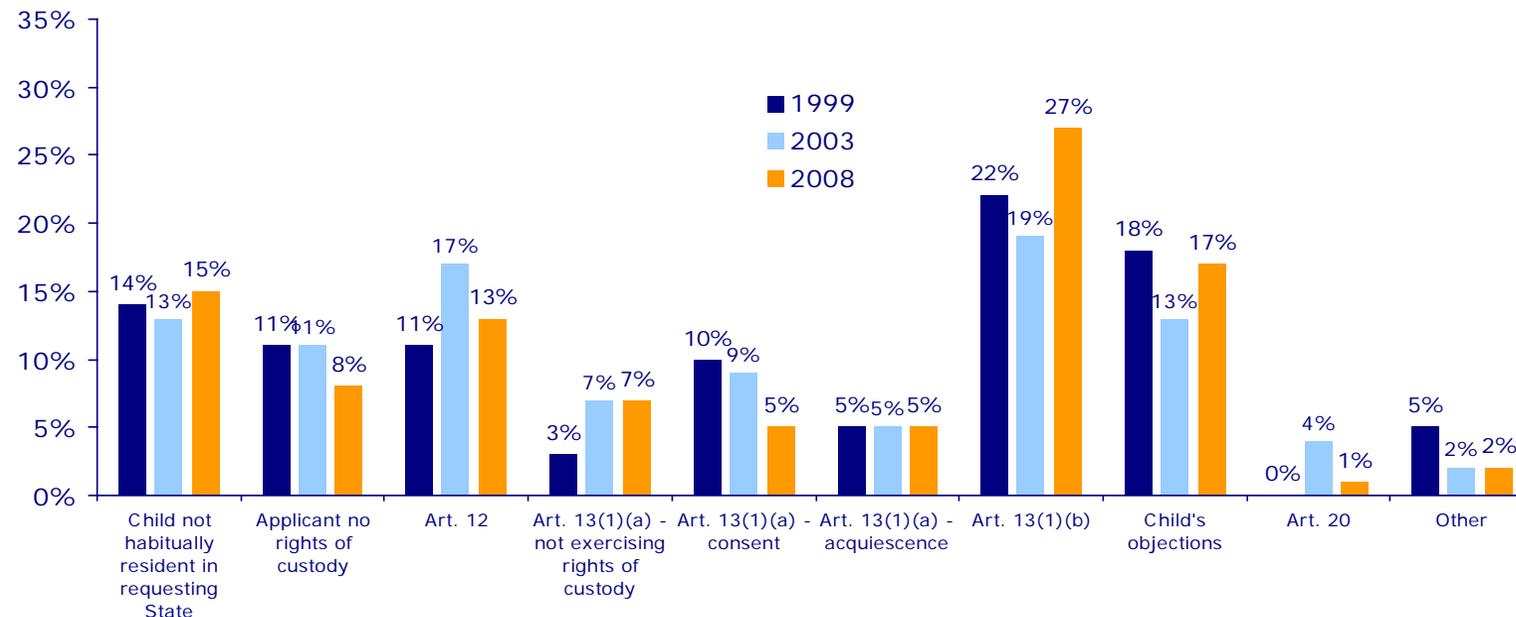
- Majority of applications do not go to court (56% in 2008)
- Minority of applications end in a judicial refusal (15% in 2008)



Statistics on asserted exceptions

A moving target

- Increase of assertion of the “grave risk exception”, mainly in the context of domestic and family violence
- Increased refusal of return based on the child’s objection



Some recent figures

- US statistics in 2013 (for Hague Proceedings)
 - 362 voluntary returns, 217 judicial return orders, 160 judicial refusals
 - Unresolved return applications remain stable (118 in 2012, 112 in 2013, 111 in 2014)
 - Not Compliant States, States with patterns of non-compliance or enforcement concerns have dropped from 12 in 2012 to 11 in 2013 and 8 in 2014
- Quebec statistics in 2013
 - 7 voluntary returns, 2 judicial return orders, no judicial refusal
- Germany statistics 2012
 - 53 voluntary returns, 15 judicial return orders, 6 judicial refusals



Quo Vadis?

Is the Convention still fit for its purpose?

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INTERNATIONAL CHILD ABDUCTION

The Inadequacies
of the Law

Thalia Kruger



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BATTERED WOMEN, THEIR CHILDREN, AND INTERNATIONAL LAW

The Unintended Consequences of
the Hague Child Abduction Convention

Taryn Lindhorst and Jeffrey L. Edleson

At the global level

- ❖ Still reluctance to join – in particular States whose legal systems are based on or influenced by Sharia: how to promote the Convention in these States?
 - ❖ Training authorities in newly acceding States
 - ❖ “Malta Process”
- ❖ Uniform interpretation and implementation – different legal systems and concepts: Convention provisions need to be applied consistently
 - ❖ INCADAT, Judges Newsletter, Guides to Good Practice, etc
- ❖ Other challenges: duration of proceedings still too long, enforcement is a challenge, how to better prevent child abductions (e.g., through use of travel forms?)
 - ❖ Regular discussion with relevant stakeholders and at Special Commission meetings
 - ❖ Concentration of jurisdiction
- ❖ Achieving voluntary returns – promotion of amicable agreements / mediation to find solutions to cross-border family disputes

Mediation in the context of the 1980 Convention

- The Convention encourages the amicable resolution of family disputes
- Central Contact Points set up in the context of the Malta Process
- Mediation should not delay the judicial proceedings
 - The Netherlands has a well-designed mediation system with effective time targets
 - In 2011, 50% of return applications in the Netherlands went to mediation, a third of mediations ended in full agreement, and a third ended in partial agreement
- Experts' Group on cross-border recognition and enforcement of agreements has been established

And in Europe?

The Convention within an integrated system of international child protection:

1980 Hague Convention, Brussels II bis Regulation and 1996 Hague Convention working as a package

Human rights approach to the Convention (by ECtHR)

- ECtHR Grand Chamber decision **Neulinger and Shuruk v. Switzerland** (6 July 2010) on the need of “an in-depth examination of the entire family situation and of a whole series of factors” (§139)
- ECtHR Grand Chamber decision **X. v. Latvia** (26 November 2013) emphasises the complementarities between the ECHR and the 1980 Convention
 - “in the area of international child abduction the obligations imposed by Article 8 on the Contracting States must be interpreted in the light of the requirements of the Hague Convention” (§ 93)
 - “the Court considers it opportune to clarify that its finding in paragraph 139 of the Neulinger and Shuruk judgment does not in itself set out any principle for the application of the Hague Convention by the domestic courts” (§ 105)

Child Abduction Convention is *acquis*...

- Development or adaptation of the Convention
- Interaction with 1996 Hague Child Protection Convention
- Identification of new challenges and trends
- Dialogue with EU institutions and Member States



Review of Brussels II bis

Opinion 1/13



Thank you for your attention

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