

Principles of the 1980 Hague Convention on Child Abduction

Carolina Marín Pedreño

Solicitor and Abogado

Partner at Dawson Cornwell Solicitors, London

cmp@dawsoncornwell.com

Dawson Cornwell the family law firm

Membership



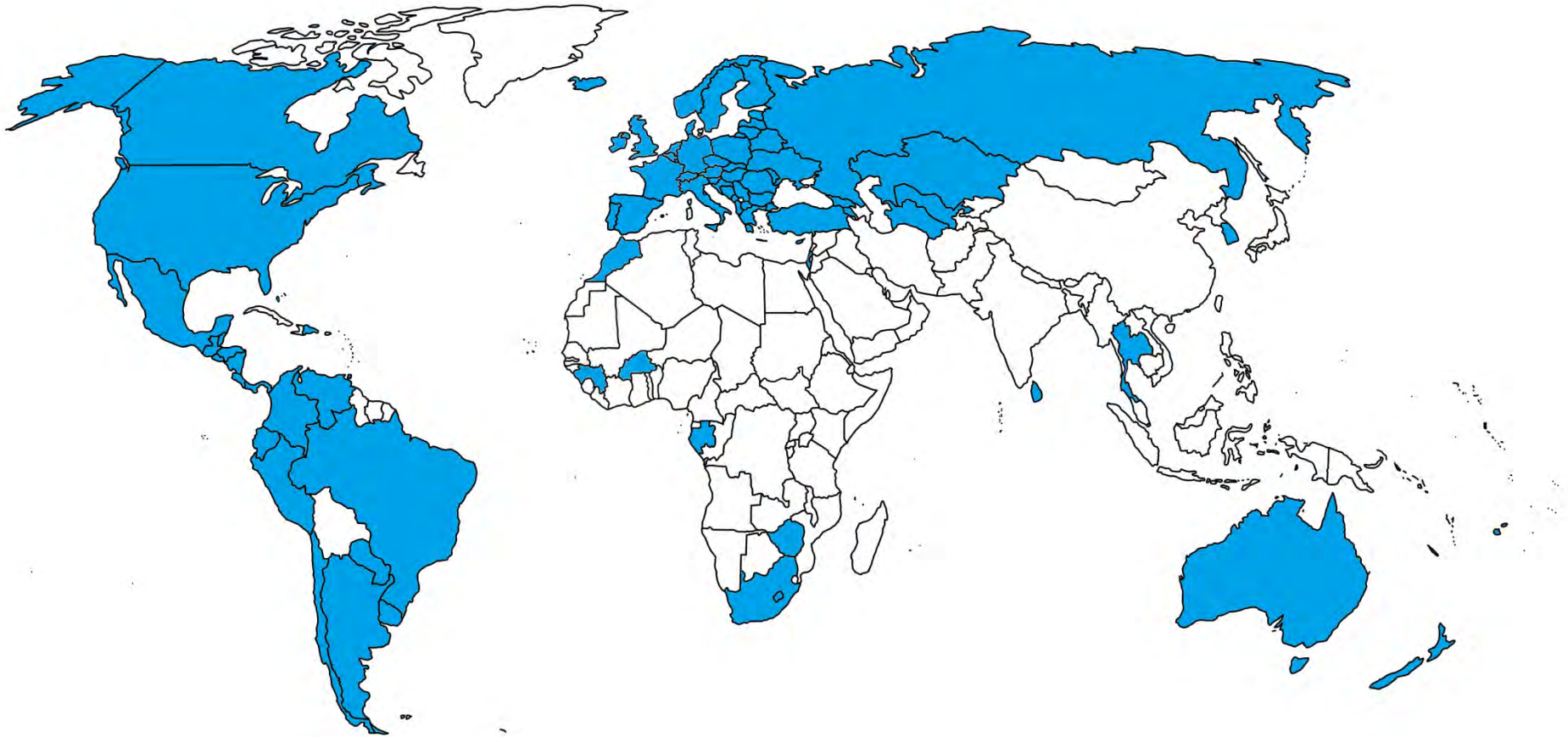
Dawson Cornwell the family law firm

Contracting States

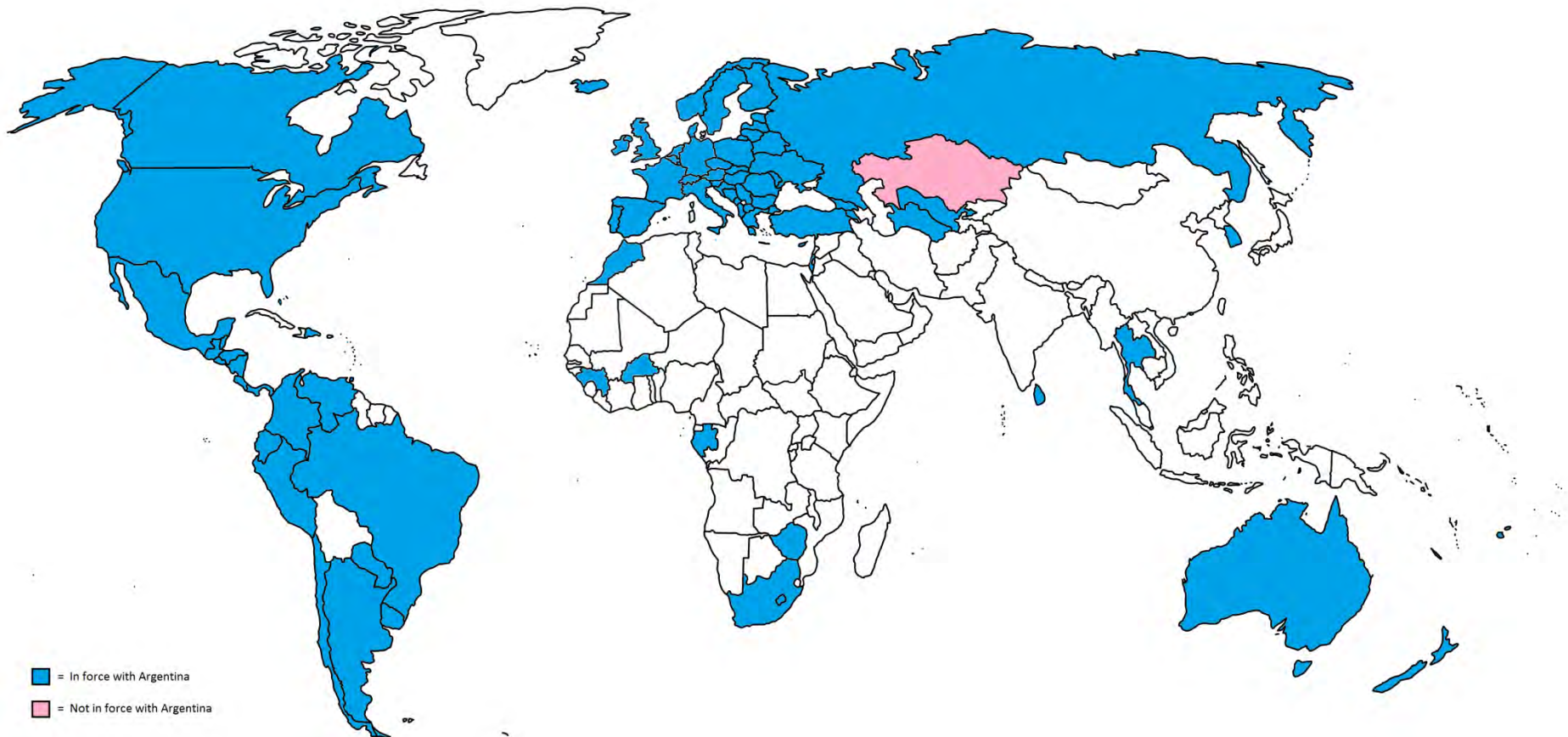


- There are 90 Contracting States.
- Membership is a 'semi-open' system.
- Article 31: Convention should only have effect between an acceding State and States which have explicitly declared their acceptance of the accession.
- Compare to Article 58 of the Convention of 19 October 1996 on the Protection of Children: accession will have effect unless an objection is raised within six months after receipt of notification.
- Relies heavily on mutual confidence and co-operation.

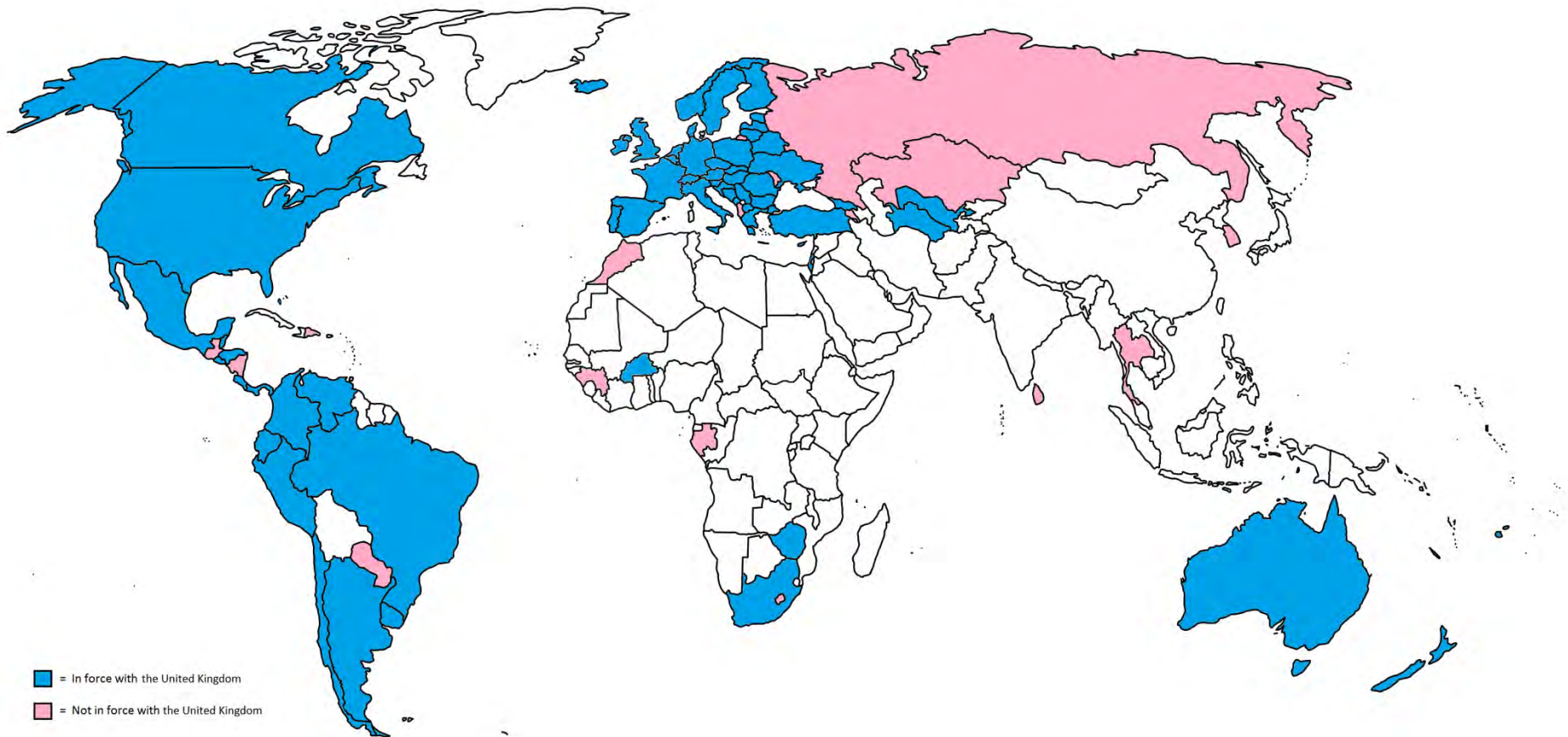
Contracting States



Contracting States to the 1980 Hague Convention in respect of Argentina



Contracting States to the 1980 Hague Convention in respect of the UK



Basic Principles



Dawson Cornwell the family law firm

Basic Principles



- Re-integration

Harmful effects of a disruption to the child's status quo are well-known: child is in a strange and unfamiliar environment and also suffers from the loss of contact with left-behind parent.

- Preventative

Convention seeks to deter abductors from establishing artificial jurisdictional links with States which they perceive to be favourable towards their claims for custody. It does this by facilitating a child's swift return.

Best Interests?



- The Convention records that States are “Firmly convinced that the interests of children are of paramount importance in matters relating to their custody”.
- Reference to best interests in the main text of the Convention was rejected because:
 - The best interests principle is too vague: does it refer to a child’s interests immediately after the abduction, his adolescence or throughout his life?
 - Risk that requested State will impose its own assumptions, cultural values and social attitudes which are unfamiliar to the community the child was habitually resident in.
 - Home State is better placed to assess what is in the child’s best interests.
 - Prolonged investigation into a child’s best interests in the requested State may cause delay, further disruption to the status quo and adversely affect the child’s well-being.

“Swift Return” (But how swift in practice?)



Swift Return



- Article 2: States “shall use the most expeditious procedures available.”
- Article 11: applicant or Central Authority of requested State may request a statement of reasons for any delay if a decision has not been reached within six weeks from the date the proceedings commenced.
- Compare Article 11(3) of Brussels II revised: courts in each Member State are under an *obligation* to issue its judgment no later than six weeks after an application is lodged (except where exceptional circumstances make this impossible).

Swift Return



Contracting State child taken to	Mean number of days taken to reach a final outcome	Number of applications where dates available	Number of applications pending
Denmark	44	6	2
Iceland	73	2	0
Finland	75	7	0
Sweden	83	4	2*
New Zealand	84	32	0
UK - England & Wales	88	198	1*
Dominican Republic	91	5	0
Latvia	97	8	0
Serbia	105	1	2
Uruguay	112	3	1
UK - Northern Ireland	120	7	0
Italy	123	20	0*
Portugal	133	19	5
Australia	140	70	0
Honduras	141	2	0
Canada	145	33	2
Chile	146	10	0

Source: A statistical analysis of applications made in 2008 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (published by the Hague Conference in November 2011)

Swift Return



Contracting State child taken to	Mean number of days taken to reach a final outcome	Number of applications where dates available	Number of applications pending
Norway	146	6	0
Cyprus	149	3	1
Hungary	162	7	0
Austria	162	23	1
Germany	163	54	9
Israel	167	7	2
Estonia	181	5	0
Czech Republic	187	9	0
Ireland	187	23	2
Poland	195	48	2
Netherlands	210	22	1
UK - Scotland	208	4	0*
Belgium	223	29	0
Argentina	225	8	8
Luxembourg	226	2	0
USA	227	122	34
Costa Rica	242	2	0

Swift Return



Contracting State child taken to	Mean number of days taken to reach a final outcome	Number of applications where dates available	Number of applications pending
Greece	252	5	6
Mexico	252	100	34
South Africa	260	8	2*
Spain	265	29	1*
Romania	268	41	6
France	278	30	3*
Ecuador	286	8	1
Switzerland	301	8	3
Turkey	314	24	7
Brazil	320	4	6
Colombia	321	25	2*
Panama	321	7	0
Lithuania	322	3	0
Ukraine	327	15	4
Bulgaria	347	17	0
Georgia	436	1	0
Paraguay	646	1	0*
Total	188	1127	150

* The numbers marked with an asterisk indicate that outcomes were not known for all applications received by that State and so there may have been more applications pending.

Defences



Non-return



- Child not habitually residence in requesting State
- Applicant has no rights of custody
- Article 12 – child settled / taken to another State
- Article 13(1) a) – not exercising rights of custody
- Article 13(1) a) – consent
- Article 13(1) a) – acquiescence
- Article 13(1) b) – grave risk of harm / intolerable situation
- Child's objections
- Article 20 – protection of human rights and fundamental freedoms

Article 20



- Article 20: return of the child may be refused if a return would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.
- Comprise following debates in the Commission between a wide ‘public policy’ exception (which might lead to prolonged litigation and investigation into the legal merits in the requested State) and a narrow ‘manifestly incompatible’ exception.
- Must be interpreted restrictively in order to avoid the Convention becoming dead letter. In 2008, 2003 and 1999, Article 20 was not cited as a sole reason for judicial refusal. Article 20 was, however, cited as a combined reason in 2 cases in 2008 and in 8 cases in 2003.

Combined reasons for judicial refusal 2008, 2003 and 1999



	2008		2003		1999	
	Frequency	Percentage	Frequency	Percentage	Frequency	Percentage
Child not habitually resident in requesting State	53	15%	27	13%	17	14%
Applicant no rights of custody	28	8%	22	11%	13	11%
Art 12	46	13%	34	17%	13	11%
Art 13(1) a) not exercising rights of custody	23	7%	15	7%	4	3%
Art 13(1) a) consent	16	5%	19	9%	12	10%
Art 13(1) a) acquiescence	17	5%	10	5%	6	5%
Art 13(1) b)	91	27%	38	19%	26	22%
Child's objections	58	17%	26	13%	21	18%
Art 20	2	1%	8	4%	0	0%
Other	8	2%	5	2%	6	5%
Total	342	100%	204	100%	118	100%

Source: A statistical analysis of applications made in 2008 under the Hague Convention of 25 October 1980 on the Civil Aspects of International Child Abduction (published by the Hague Conference in November 2011)

Combined reasons for judicial refusal 2008, 2003 and 1999



	Child not habitually resident in requesting State	Applicant had no rights of custody	Art 12	Art 13a not exercising rights of custody	Article 13(1) a) consent	Art 13(1) a) acquiescence	Art 13(1) b)	Child's objections	Other	Article 20	Total
Argentina	1										1
Colombia		2	3					1			6
Ecuador			2					1			3
France	5		2	2	1	1	4	2	1		18
Mexico	12	1	7	8	1	1	8	15			53
Spain		1	5	3	3		3	6		1	22
UK – England and Wales	3	1	3		1		6	4			18
USA	4		5		3		4	4			20
TOTAL (incl. countries not listed above)	53	28	46	23	16	17	91	58	8	2	342

Please refer to the accompanying paper for important notes concerning the figures in the 'Total' column.

Carolina Marín Pedreño

Solicitor and Abogado

Partner at Dawson Cornwell Solicitors, London

cmp@dawsoncornwell.com

15 Red Lion Square, London, WC1R 4QT, England

+44 (0)20 7242 2556

www.dawsoncornwell.com

Dawson Cornwell the family law firm