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# Sophie Turner, Joe Jonas, and The Hague Convention

By

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Brad Pitt and Angelina Jolie, Halle Berry and Gabriel Aubry, Britney Spears and Kevin Federline: celebrity custody battles tend to grab headlines and dominate social and other media as public personalities battle each other in family court.

The latest iteration of this is the much-publicized divorce of Joe Jonas and Sophie Turner. Recently Turner filed a petition for the return to England of the minor children she shares with Jonas. This was filed pursuant to the Convention on the Civil Aspects of International Child Abduction, more commonly known as the “Hague Convention,” leaving tweeters, TikTokers and celebrity watchers wondering what the Hague Convention is and how it may pertain to other custody cases.

For most people going through a domestic relations case, The Hague Convention will never come up. However, for those who have a spouse or co-parent with ties to another country, it may be important to learn about this important international treaty.

## The Hague Convention

The Hague Convention is an international treaty that has been signed by 93 countries, including the U.S. Specifically, the convention is designed to “restore the status quo prior to any wrongful removal or retention, and to deter parents from engaging in international forum shopping in custody cases.” In the U.S., petitions under The Hague Convention can be filed in either federal district court, like Turner chose to do, or in a state court.

## Key Elements

One of the key elements of a Hague Convention case is establishing the child's habitual country of residence. While the language of the convention does not provide a clear definition as to what can be considered a child's habitual country of residence, courts have provided some clarification. Specifically, the U.S. Supreme Court in *Monasky v. Taglieri* noted that "A child 'resides' where she lives . . . Her residence in a particular country can be deemed 'habitual,' however, only when her residence there is more than transitory." Ultimately, determining a child's habitual country of residence is a fact-intensive inquiry and there is no one definition as to what can qualify as a habitual country of residence.

For instance, in her petition, Turner argues that while the children spent a significant amount of time abroad, their country of habitual residence is England as they were in the process of purchasing their "forever home" there to raise the children and that the children were fully integrated in all aspects of life in England, including receiving regular medical care, attending nursery school and being involved in a number of extracurricular activities.

## What the Convention Isn't

It's important to make the distinction that The Hague Convention is not a mechanism for determining the allocation of parental responsibilities. Its purpose is to make sure that the proper country can make that determination. In Turner's case, she isn't asking the court in New York to make a determination as to parenting time or decision-making authority. Rather, she is asking the district court to order that the children be returned to their home country of England to determine these questions.

## Prerequisites for Petitioner's Success

To prevail in a Hague case, the petitioning parent, in this case Turner, must establish three things:

- That the children habitually resided in a signatory state at the time of removal or retention.
- That such removal or retention breached the petitioner’s custody rights under the laws of that country.
- That the petitioner was exercising those rights at the time of retention. As in the Turner and Jonas case, there does not have to be an actual order regarding custody to prevail on a request for the children to be returned. It is the burden of the petitioning parent to establish each of these elements.

## Affirmative Defenses

Once a prima facie case for the return of the child has been established, The Hague Convention provides four affirmative defenses:

- The proceeding was commenced more than one year after the removal of the child and the child has become settled in his or her new environment.
- The person seeking return of the child consented to or subsequently acquiesced in the removal or retention.
- There is a grave risk that the return of the child would expose him or her to physical or psychological harm.
- The return of the child “would not be permitted by the fundamental principles of the requested State relating to the protection of human rights and fundamental freedoms.”

The responding parent bears the burden of establishing these defenses. If one or more of these defenses are established, the court may order that the children not be returned to their country of habitual residence.

## Attorney Fees

The final key feature of The Hague Convention is the provision for the award of attorney fees. The Hague Convention mandates that courts must award necessary expenses to a successful petitioner, except when the respondent demonstrates that an award would clearly be inappropriate. In other words, if Turner prevails in her request for the children to be returned to England, Jonas will be required to cover her reasonable attorney fees.

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