

Family Law and International Space Travel

Susan Myres, JD and Christopher Flynn, MD***

International space travel has steadily grown in the volume of countries and participants over the past 50 years. The earliest explorers leaving their homeland to see what lay across the vast ocean were in many ways similar to future space explorers leaving Earth. International family law is a term used to describe the different applications of domestic law that may be applicable to the participants. There is no independent body of law referred to as international family law but more precisely an intersection of legal practice involving divorce, custody, support, property and the enforcement of court orders. The dialogue between family law, psychology and international space exploration has little case law to support it at the present time, but is sure to change as multinational exploration continues to expand.

Introduction

Fifty years ago we had two countries in space travel, the Soviet Union and the United States of America. The need for family law expertise was less than 0 G. So much has changed. Today, there are no less than thirty-eight countries represented in active participation in space exploration. International space travel has steadily grown in the volume of countries and participants over the past fifty years. Similarly, Earth occupants have never enjoyed a higher level of migration than today. The earliest explorers leaving their homeland to see what lay across the vast oceans were, in many ways, comparable to our space explorers leaving Earth's atmosphere. The issues that I wish to discuss and explore are the family and personal dynamics that result when participants have family and relatives in multiple countries. The goal is to provide discussion points to enable agencies and companies to maximize the successful performance of flight crews, ground crews and their families.

* Susan Myres is the principal at Myres and Associates, PLLC located in Houston, Texas; <www/myresfamilylaw.com>, smyres@myresfamilylaw.com. She is a member of the Board of Managers of the International Academy of Matrimonial Lawyers, USA Chapter. She is secretary of the American Academy of Matrimonial Lawyers.

** Menninger Clinic, Houston, TX, USA, cflynn@menninger.edu.

I International Family Law

Background

International family law is a term used to describe the different applications of different local or domestic law that may be applicable to the participants when they are located in different countries. There is currently no independent body of law referred to as International Family Law. It is a fast growing area of legal practice that involves significant psychological intricacies that take into account the fluid mobility of Earth's inhabitants. The preeminent work of Jeremy Morley is a suggested tool in every human resources department.¹ His book *International Family Law Practice* is updated annually with law and case analysis. Statistically, the number of space explorers and support personnel who have been married with children is significant. The total number of children under the age 18, in those families, is noteworthy. When those participants come from different countries, reside in different locations, have different expectations, family systems, cultures and heritage the situation is ripe for conflict and controversy. Space agencies, the countries, and collateral entities that support them would be well advised to have working knowledge of the needs of those families in order to promote the highest level of performance and the greatest satisfaction for all concerned. If we are to explore planets with long duration travel with persons leaving family behind here on Earth, what steps can be taken to protect the flight crew, ground crew and families? The aspects are so fluid it is suggested, by some, that extremely long duration travel should be done by several young couples to maximize the success of colonization efforts. This model was adapted by several groups of Earth's early inhabitants. The dialogue between family law and international space exploration has little case law to support it. Generally, families try to keep their interpersonal difficulties from the public eye, but we do know that international space family law is alive and well. The wedding in 2003 of Yuri Malenchenko, a Russian Cosmonaut, and Ekaterina Dmitriev, a U.S. citizen, took place while Yuri was flying 240 miles above the Earth aboard International Space Station and Ekaterina was in the Gilruth Center at NASA's Johnson Space Center in Houston.² We know that some of our astronauts and cosmonauts leave families in their countries of origin. Some bring their families with them for the long duration of training and flight. When countries who support space agencies are also signatories of The Hague Abduction Convention and others are not, difficulties are exasperated when ignorance of its application causes immense and sometimes permanent harm.

Despite the fact that we have the sophistication and organization to fly around the world keeping people productively living in space with great comfort, there is little organization or consistency in the application of family law among the countries who cooperate in space exploration. Failure to acknowledge and

1 Jeremy Morley, *International Family Law*, 2012 edition, West Publishing.

2 Oberg, J. Cosmonaut in world's first space wedding. www.msnbc.msn.com.

address those issues is not an option. Many countries afford for the use of marital agreements that could help to reduce conflicts and lost expectations. The goal of the space agency is to have their high-performing professionals completely focused on the job at hand. Space agencies would do well to take reasonable measures to assist those highest performing professionals and their families in avoiding a distracting and sometimes dangerous period of time. To add to the complexity of the legal applications consider that including the individual states in the United States adds 49 additional family law regimens. Each U.S. state has independent and different jurisdictional rules, applications and local influences. It is not enough to know there is a U.S. variable; you need to know which state.

Case Scenarios

The significance of these potential conflicts may be best seen by considering the following scenarios:

1. Husband and Wife are U.S. Citizens; Wife is an Astronaut. They have two children. Wife is assigned a slot for ISS and will be in training for 18 months in Star City, Russia. They decide to take the family to Star City. They sell their home in the U.S, put items they do not need in storage. While in Russia, husband is primary parent of children as wife is spending time in training.
 - A. Wife discovers she is in love with a Russian and no longer wishes to remain married. Upon return to Earth, wife files for divorce in Russia. In all likelihood, wife would be given full custody with no rights to the children for husband. Eventually dad will have to leave Russia, once his visa expires.
 - B. While wife is in flight, husband decides he wants a divorce and returns to the U.S. where he stays for the next several months. He files for divorce in Texas where the couple lived less than two years ago. In Texas, he will probably be granted custody and wife will have to return to Texas to dispute his case. If she files something in Russia she might be able to seek protection by the Russian courts to claim that Russia has principle jurisdiction. Russia is not currently a signatory to the Hague Convention.
2. Astronaut previously divorced and has three children; the decree of divorce indicates that the children's residence is limited to Florida, unless the astronaut moves out of the state first.
 - A. Astronaut is assigned to Russia for training—can the other parent move away from Florida?
 - B. Astronaut is in orbit on a long duration flight—can the other parent move?
- 3a. Japanese astronaut comes to the U.S. to work in conjunction with NASA. He falls in love with his translator, a U.S. citizen. They marry and have a child. The child has three citizenships. The couple lives in Clear Lake, Texas. They go to Japan to visit father's family. While there, dad files for divorce and obtains an order for the child to remain in Japan. Mom must leave because her visa will expire. Is there any hope for mom?—Japan is not a participant in the Hague Convention.
- 3b. What if roles were reversed—U.S. citizen goes to Japan, marries a Japanese, has a child and then comes to U.S. for a family visit. The U.S. citizen will

probably lose the right to resolve the case in a U.S. court. If there is a U.S. divorce and the Japanese citizen takes the child for a visit and refuses to return, there is not a reasonable expectation that the Japanese authorities would comply with a U.S. court order and force the return of the child.

4. Examine the facts in *Abbot* and presume the British father worked for ESA. In its 2010 decision in *Abbott v. Abbott*, The U.S. Supreme Court resolved the question of *ne exeat* rights, that is, whether the right to veto the removal of a child from the child's home country, without more, constituted a right of custody entitling the left-behind parent to the child's return. In *Abbott*, the British father and American mother moved to Chile with their son in 2002. In 2003, the parties separated and the Chilean court granted the mother sole custody and the father visitation. Under Chilean law, once visitation was awarded, the father's authorization was automatically required before the child could be taken out of the country.

While litigation was still pending in Chile, the mother took her son to Texas, where she filed for divorce in state court. The father filed suit in U.S. federal court, seeking return of his son under the Abduction Convention and the Child Abduction Act. The U.S. Court of Appeals for the Fifth Circuit affirmed the denial of relief on the ground that a *ne exeat* right was not a right of custody.

The Supreme Court reversed. Taking into account the text of the Abduction Convention, the views of the State Department, decisions of foreign courts, and the purposes on the Convention, the court held that a *ne exeat* right constituted a right of custody.⁶

- 5a. NASA administrator moves his family of 5 to Holland for an assignment at ESA. They purchase a home. The children, ages 16, 14 and 6, are enrolled in school. After 18 months, his wife wants to move back to the U.S. While husband is on a business trip to Moscow, she packs up the suitcases and moves back to Maryland, where they are from. Upon husband's return, husband files for an application under the Hague Abduction Convention. The application is approved by the Dutch government and sent to the U.S. central authority. An attorney is appointed for him and wife is sued for the return of the children to Holland. The 16 year old indicates that she wants to stay in the U.S.

Result- Since children 16 years or older are exempt, the U.S. district court should follow the application of the Hague Convention and order the return of the two youngest children. This does not mean the husband wins custody. It only means the determination of custody will be in Holland. U.S. and Holland are signatories to the Convention.

- 5b. With similar facts as set in 5a, what if the parents do not give up their residence, financial accounts, and other connections in the U.S? Wife can argue that the U.S. is the habitual residence of the children and work to keep the case in Maryland. The U.S. Supreme Court is poised to give some guidance when they decide *Chafin v Chafin*.³

3 *Chafin v. Chafin*, USSC No. 11-1347.

Premarital Agreements

Each jurisdiction has a position on accepting or rejecting the validity of agreements between parties about to marry. Some jurisdictions offer couples a choice of marital property schemes. Before moving to other countries, it is always advisable to investigate the options for the parties to specify their intentions to avoid unintended consequences in the future.

What if there is an applicable marital agreement or marital property scheme? How does each forum address the issue of validating a marital agreement? Can the agreement be approved or rejected in whole or in part?

Property Rights

In addition to abduction issues of children discussed previously, what factors would encourage a person to shop around to determine where to file the court action when several jurisdictions are possible?

Research Jurisdictional requirements: How long do you or your spouse have to live in the jurisdiction before you can file for relief? Do both of you have to live in the same place? How long do you and/or your spouse have to live apart before you can seek a divorce? How long does the average divorce process take? How much does it cost? Which law applies; the one of the residence, or the homeland?

How does the forum determine what property is subject to division? Is property owned prior to marriage subject to division? Is property acquired after marriage ever subject to consideration in post-divorce actions? How are assets valued? What are the methods of division; equal or disproportionate based on factors? Is it according to the person who earned or acquired the asset?

Does the tribunal have complete discretion or are there guidelines reflecting appropriate division? What about debt or liabilities- how are these addressed? When does the marital property cease to exist? Who pays for the court expenses and attorney fees? What are the duties each spouse owes to the other after a divorce is requested?

Alimony/ spousal support—is it available? How much can be expected? How is it determined? How long does it last? Can it change after the divorce? What are the restrictions- remarriage, visitation, support, college, health insurance?

Children's Issues

Children's issues without abduction complications:

- How is custody determined? Always to mom or dad? Is the gender of the parent irrelevant? How is best interest of the child defined? What factors are considered? Do the children have a voice?
- Visitation/ Possession- How is time with children decided? By mutual agreement, specified standards or discretionary with the court?
- How are expenses for children addressed? How much, how long, individual case decisions or formula? How long is child support payable?
- Are there any provisions for health insurance or medical expenses? Is it applicable across borders? U.S. is embroiled in the topic of health care. If the

child has a health issue and insurance is prohibitive, is there a jurisdiction with socialized medical care available?

- College-Is there any obligation to pay for the children to attend college? For how long? Are there any limitations or restrictions?

Divorce

Incidences of divorce among space travelers and those who support them are difficult to gather due to the privacy rights of all concerned. In the U.S., the divorce rate is 50%. Other developed countries report equally high national averages.

Generally, high performance individuals with long durations of absence and high anxiety for safety and return all contribute to significant stressors on the family. It can be very demanding to have a high performing individual return home to the normal, mundane workings of a family. What can these agencies and companies do to support them and encourage more successful families? If a divorce is granted in one country, will it be recognized in another?

Infidelity

Recent studies show that the leading cause for someone to stray from their marriage is not as suspected, an unhappy home life. To the contrary, the leading cause is opportunity.⁴ Living far away from your spouse and family surrounded by other high performance individuals- opportunity knocks.

Should we try to intervene? What could be done to reduce the opportunity? Would and increase family participation in all aspects of the international travel help? Should we institute and enforce non-fraternization policies?

As Dr. Kanas pointed out in his 2010 paper, *Expedition to Mars: Psychological, Interpersonal, and Psychiatric Issues*,

Anecdotal reports and research from on-orbit space missions have defined a number of psychological, interpersonal and psychiatric issues that affect crewmembers and mission control personnel who are involved with near-Earth space missions. However, the long distances and durations of human expeditions into deep space, such as a mission to Mars, will introduce a number of new psychological and interpersonal stressors that have not been experienced before. There will be unprecedented levels of isolation and monotony, real time communication with the Earth will not be possible, the crew will have to work autonomously, there will be great dependence on computers and other technical resources located on-board, and the Earth will become an insignificant dot in space. Based on what is known, the effects of such stressors will be discussed, and countermeasures for dealing with them will be proposed.⁵

4 Marano, HE. From promise to promiscuity. *Psychology Today*, August 2012, 60.

5 Kanas, N. Expedition to Mars: Psychological, Interpersonal, and Psychiatric Issues. *J Cosmol* 2010(12):3741-7.

The United Nations International Principles and Declarations

What applicable international laws provide guidance? One might expect The United Nations Office for Outer Space Affairs (UNOOSA)⁶ which assisted the ad hoc Committee on the Peaceful Uses of Outer Space established by the General Assembly to provide guidance.

The United Nations Office for Outer Space Affairs implements the decisions of the General Assembly and of the Committee on the Peaceful Uses of Outer Space. The office has the dual objective of supporting the intergovernmental discussions in the Committee and its Scientific and Technical Subcommittee (S&T) and Legal Subcommittee, and of assisting developing countries in using space technology for development. In addition, it follows legal, scientific and technical developments relating to space activities, technology and applications in order to provide technical information and advice to Member States, international organizations and other United Nations offices.

The United Nations General Assembly adopted five declarations and legal principles which encourage exercising the international laws, as well as unified communication between countries.⁷ The five declarations and principles are:

- The Declaration of Legal Principles Governing the Activities of States in the Exploration and Uses of Outer Space (1963)
- The Principles Governing the Use by States of Artificial Earth Satellites for International Direct Television Broadcasting (1982)
- The Principles Relating to Remote Sensing of the Earth from Outer Space (1986)
- The Declaration on International Cooperation in the Exploration and Use of Outer Space for the Benefit and in the Interest of All States, Taking into Particular Account the Needs of Developing Countries (1996)
- The Principles Relevant to the Use of Nuclear Power Sources in Outer Space (1992) "States launching space objects with nuclear power sources on board shall endeavor to protect individuals, populations and the biosphere against radiological hazards.

The UN General Assembly adopted Resolution 1962 (XVIII), the Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space. The Declaration set out various fundamental principles which were expanded upon in the Outer Space Treaty of 1967.

Despite all the significant work set forth in those principles and declaration, there is not a single reference to the needs of the flight crews' families or the ground crews and their families.

Families are the primary unit in social organization. Generally, every person involved in space exploration has family. Ignoring this dimension is not productive. In order to find any assistance with the internationalization of family law, other UN treaties may be useful.

⁶ <www.oosa.unvienna.org/oosa/SpaceLaw/index.html>.

⁷ Stark, *The Internationalization of American Family Law*, Journal of the American Academy of Matrimonial Lawyers. Vol. 24 number 2, 2012. 468.

Conventions and Treaties of The Hague

Many conventions addressing the needs of families on an international scale were formed by The Hague: Maintenances Convention; Convention on the Civil Aspects of International Child Abduction; 1977 Hague Convention on Celebration and Recognition of Marriage; Hague Convention on the International Recovery of Child Support and Other Forms of Family Maintenance; International Covenant on Civil and Political Rights; International Covenant on Economic, Social and Cultural Rights and Convention on the Elimination of all forms of discrimination against woman.

Not all countries adopt or ratify these. Nor do all signatories to the Convention enforce the terms of the Convention consistently. Only eighty-one countries are signatories to the Hague Abduction Convention.⁸ Many are familiar with the story of Sam Goldman who waited five years for the lawful return of his child.⁹ Both the U.S. and Brazil were signatories and it still took five years to reach a conclusion.

II Summary

Unless there could be uniformity in the laws and the application of these laws, families will continue to struggle mightily with issues involving international family law. Agencies and companies who employ personnel that are moving around the globe and beyond must be prepared to help those families and family law problems extend beyond national boundaries.

8 The current chart of conventions is maintained by The Hague at <www.hcch.net/upload/statmtrx_e.pdf>.

9 The current chart of conventions is maintained by The Hague at <www.hcch.net/upload/statmtrx_e.pdf>.