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On May 30th, 2020, SpaceX became the first privately developed, crewed spacecraft to carry passengers to the International Space Station (ISS).[1] With this move, SpaceX has opened the door to the "final frontier" with the potential for future commercial space flights to the ISS, the Moon, and possibly Mars. With Orbital Travel projected to be a $20.3 industry by 2031,[2] more competition will enter the field, and commercial space flights will become more regular and accessible for the general population. Currently, there is a major void in law governing space, and these space carriers such as SpaceX and Virgin Galactic are flying into the unknown in more ways than one. As such, I believe space carriers will seek to limit their personal liability by finding inspiration from current Contracts of Carriage used by airlines. In general, Contracts of Carriage limit liability while also stating the rights, duties, and responsibilities of each party.[3] In my argument, I will outline what a Contract of Carriage is, current laws regulating space, what change need to be made, and how Contracts of Carriage's might help.

First, what is a Contract of Carriage? Generally, a Contract of Carriage seeks to state the rights and duties of responsibilities of each party.[4]

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[1] SPACEX WEBSITE, *SPACE STATION: TRANSPORTING HUMAN TO THE ORBITING LABORATORY IN THE SKY* (2022), https://www.spacex.com/human-spaceflight/iss/index.html.

[2] *Flying over 57,500 Passengers toward Space by 2031 – Orbital Travel Captures Majority of $20.3 Billion Space Travel Revenue,* YAHOO FINANCE (Jan. 5, 2022), https://finance.yahoo.com/news/flying-over-57-500-passengers-154600715.html.

[3] *History and Development of the Contract of Carriage,* LAWTEACHER.NET (Nov. 3, 2020), https://www.lawteacher.net/free-law-essays/contract-law/history-and-development-of-the-contract-of-carriage-5605.php?vref=1>.

[4] *Id.*

Contracts of Carriages were made in reaction to the Warsaw Convention enacted in 1929 by the UN.[5] While there are many important sections to the Warsaw Convention, it is important to note that, as a whole, it sought to provide the bare minimum requirements for airline carriers[6] and provide a cause of relief for which a claim can be brought in the case of an incident.[7] To examine how Contracts of Carriages work today, I looked at the world's largest airline's contract of carriage, Delta Airlines. Within Delta's Contract of Carriage lie standard provisions such as "Refusal to Transport"[8] and "Schedules and Operations"[9] but also mandated Warsaw Convention sections such as Rule 18 "Liability of Carriers; Codeshare Rule".[10] Delta's Contract of Carriage serves as a successful example of how an organization can be in compliance with overarching rules and regulations yet still have a document tailored for its own needs.

What laws are currently in place? When looking at the space law, there are few regulations. Generally, most of the regulation comes from the direction of the United Nations (UN). In an effort to regulate Outer Space travel, the UN met in 1972 to form an agreement that would govern space.[11] Within this agreement, there are five individual treaties titled: (1) Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies,

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[5] *CONTRACTING PARTIES TO THE CONVENTION FOR THE UNIFICATION OF CERTAIN RULES RELATING TO INTERNATIONAL CARRIAGE BY AIR SIGNED AT WARSAW ON 12 OCTOBER 1929*
AND THE PROTOCOL MODIFYING THE SAID CONVENTION SIGNED AT THE HAGUE ON 28 SEPTEMBER 1955 (Oct. 12, 1929),
https://www.icao.int/secretariat/legal/List%20of%20Parties/WC-HP_EN.pdf.

[6] *Convention for the Unification of Certain Rules for International Carriage by Air* 14, May 28, 1998, 2242 U.N.T.S. 309.

[7] *Id.*

[8] DELTA WEBSITE, *DELTA INTERNATIONAL GENERAL RULES TARIFF* 8 (Sept. 1, 2021), https://www.delta.com/content/dam/delta-www/pdfs/general-rule_web-ready-01sept-2021pdf.pdf.

[9] *Id.* at 1.

[10] *Id.* at 16.

[11] UNITED NATIONS, UNITED NATIONS TREATIES AND PRINCIPLES ON OUTER SPACE, https://www.unoosa.org/pdf/publications/STSPACE11E.pdf.

(2) Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, (3) Convention on International Liability for Damage Caused by Space Objects (4) Convention on Registration of Objects Launched into Outer Space, and (5) Agreement Governing the Activities of States on the Moon and Other Celestial Bodies.[12] Of the five treaties, the only one with significance in terms of liability of Private Space Carriers is the Convention on International Liability for Damage Caused by Space Objects. Additionally, there is an American Act known as the U.S. Commercial Space Launch Competitiveness Act that sought to increase regulation in the space industry. In the coming sections, I will break down each act with a small analysis outlining the important provisions and how they are applicable to future space exploration.

Within Space Law, the Convention on International Liability for Damage Caused by Space Objects (CILDCSO) is an important binding treaty created by the UN. Written in 1972[13], the CILDCSO was created to provide a form of relief for damage caused by other space objects.[14] While the CILDCSO is fairly comprehensive in most sections, it fails to define "fault".[15] Other terms such as "damage" and "space object" are clearly defined, but the agreement lacks a definition for "fault".[16] While "fault" is not defined, an additional section is missing from the agreement, that being regulation of private companies. Contained within the agreement, the CILDCSO applies to "states[s]" but doesn't extend its language to include private companies.[17] The importance of the word "state" and not "private companies" cannot be overstated. If the UN wished to extend the CILDCSO to private companies, I believe they would have done just that. The CILDCSO was a major step forward in space law, however, providing

[12] *Id.*

[13] Convention on the International Liability for Damage Caused by Space Objects, Mar. 29, 1972, 961 U.N.T.S. 187.

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

channels for which relief can be brought[18] and creating dispute resolution committees for conflict resolution.[19] Even though there is a clear shortcoming in who the agreement is binding upon, "states" but not private companies, the framework provided from this agreement can be useful in the future when looking to regulate space.

The U.S. Commercial Space Launch Competitiveness Act (CSLCA) is a major piece of US regulation governing space. Crafted specifically to engage growth within the space industry, the CSLCA was a major step forward for US regulation.[20] While this act has many provisions that cover liability in space such as limiting the amount of liability,[21] it also fails to address activities outside of launch and reentry.[22] The major shortcoming to this act is its narrowness in its definition of "Launch" and "Reentry". Neither definition covers the possibility of an accident happening during docking with the ISS or entry onto another celestial body, just to name a few.[23] While the agreement regulates activities when leaving and reentering Earth's atmosphere, it fails to cover activities while in flight.

What solutions could possibly bring better and more comprehensive regulation to the space industry? First, an expansion of CILDCSO could solve many issues currently faced. While the CILDCSO is currently limited to just "States", an expansion to include "private companies" or "all space carriers" could possibly extend the necessary regulation needed for more clarification. Second, an expansion of the CSLCA could possibly solve other issues. With the CSLCA currently only governing launches and reentries, there is a gap in regulation in the way of in-flight activities and extra-earth explorations. If the definitions for "Launch" and "Reentry" can be extended to include in-flight and extra-earth

[18] *Id.* at 5.
[19] *Id.* at 6.
[20] 51 U.S.C § 10101 (2011).
[21] *Id.*
[22] 51 U.S.C. § 50914 (2011).
[23] H.R. 2262 (114th): U.S. Commercial Space Launch Competitiveness Act.
[23] 51 U.S.C. § 50914, *supra* note 22.

explorations, the CSLCA could serve as a strong piece of regulation. Third and finally, Space Carriers should look at how airline companies, such as Delta Airlines, have been able to integrate regulations into their Contracts of Carriage. Airlines have managed to abide by regulations such as the Warsaw Convention while also adding their own personal touch. Whichever option is proven, it is clear more regulation is needed, and when it comes, space carriers should look at modern airline Contracts of Carriage for inspiration.

With continued expansion into the space industry, conflict is almost inevitable. With few regulations and gaps in legislation, many circumstances are not currently addressed. When space Contract of Carriages are formed, they will need to be in compliance with the current laws and regulations governing space, whether that be an expansion of CILDCSO, or CSLCA, or a new treaty or convention. Modern contracts of carriage will also influence the future as proven successful agreements in the airline industry. Until that time, "the final frontier" will remain unknown in more ways than one.

Edited by Alex Beezley