

Transcending Societal Issues for Space Exploration (12)  
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BEYOND THE LAW OF FLAGS: CLARIFYING LIABILITY ISSUES FOR PERSONNEL DURING  
HUMAN SPACE FLIGHT

**Abstract**

As human space flight (HSF) continues to hold relevance for outer space exploration—and as commercial space tourism ventures will rely on insights gained through HSF to ensure the safety of future space tourists—the issue of liability in outer space for injury, loss, or damage to human occupants of spacecrafts must be constantly assessed. Yet under the current system of international law governing outer space activity, this liability framework remains murky at best: especially where exploration may be undertaken by private companies.

This paper provides a comparative law analysis, drawing from lessons learned through maritime law, to consider how the “flags of convenience” regulatory issue that challenges individuals seeking redress in international waters may be avoided in the outer space exploration context.

The paper begins with an overview of the international law regime for outer space, assessing in particular applicable provisions of the Outer Space Treaty and the Liability Convention. From this overview, it argues that current dispute settlement procedures in outer space are ill-equipped to address certain harms and lists a series of potential barriers to individuals bringing actions in their own capacities were an injury, loss, or damage, to occur during HSF (whether exploratory or touristic in nature). Finally, it assesses how, under international law, the country of registration of a spacecraft is the basis for jurisdiction over the personnel of the spacecraft.

The paper then turns to the law of the sea and in particular, the issue presented by the “flags of convenience” dilemma. Dating back to the sixteenth century, this dilemma arises when a country permits the registration of a foreign-owned naval vessel under conditions convenient for the foreign owner registering; often, these conditions involve looser regulatory standards. It explores how the “flags of convenience” issue has resulted in an inequitable legal landscape for victims of torts and crimes at sea.

The paper concludes by offering a series of recommendations, based on lessons learned from maritime law, regarding the avoidance of a similar race to the bottom in which space-capable private actors could seek to register spacecraft in countries with “convenient” regulatory conditions. With the goal of improved avenues for redress for HSF personnel (particularly those on long-duration flights), these recommendations range from reassessments of the “genuine link” standard from the *Nottebohm Case* and the Convention on the High Seas, to a more uniform approach to lifting the corporate veil in the case of private space companies.