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# CRUISE SHIP AND CRIME: HOW TO BETTER PROTECT UNITED STATES' CITIZENS WHO ARE VICTIMS OF CRIME ON THE HIGH SEAS

*Eda Harotounian\**

## I. INTRODUCTION

In 2003, Disney released the first movie of what would become the *Pirates of the Caribbean* franchise, a series of swashbuckler films romanticizing the pirate life. It's almost impossible to avoid being swept up by the rough charm of a life on the high seas—a world where rules are just “guidelines” and the *raison d'être* fueling men are whispers of great treasure just waiting to be found. But the appeal stems from the fact that it's all just fantasy. In reality, clear and set laws help people navigate their everyday life and manage their expectations. For example, members of a society have an unspoken pact about the types of behavior that society will tolerate. To a degree, that pact is reflected in criminal laws that penalize those who engage in anti-social behaviors such as assault or robbery. When that unspoken social pact is broken, and members of a society find themselves victims of crime, they know that they can turn to the police to hold aggressors liable. Not many people would like to live in a world of uncertainty. However, for the victims of crime aboard cruise ships, the rules can begin to feel a lot like guidelines when jurisdictional uncertainty prevents prosecution.

In 2011, Janet Powers of Portland, Oregon took a cruise in the Caribbean with her family aboard the *Carnival Victory*, which was, and still is, registered in Panama.<sup>1</sup> Powers complained to crew

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1. WPTV, *Investigating Cruise Crimes at Sea*, FIRST COAST NEWS (Feb. 27, 2014, 5:52 AM), <https://www.firstcoastnews.com/article/news/crime/investigating-cruise-crimes-at-sea/77->

members about another passenger's child making noise in the hallway and was later confronted by that passenger.<sup>2</sup> Tensions ran high, resulting in the other passenger grabbing Powers by her hair and smashing her head against the wall.<sup>3</sup> When the ship stopped at the next port of call in Puerto Rico, Puerto Rican police told Powers they had no jurisdiction because the alleged assault occurred in international waters. Puerto Rican police referred Powers to the Federal Bureau of Investigation (FBI).<sup>4</sup> After filing an FBI report, Powers was told that her "case did not merit prosecution," while her assailant walked away with no repercussions.<sup>5</sup> Stories like Powers' are not uncommon, and while crimes occur everywhere, the inability of many victims of crime on the high seas to seek justice is particularly egregious. As the cruise industry expands, crime rates aboard cruise ships increase, as do the calls for reform.

The cruise industry has been growing steadily since the 1990s and it was estimated that about thirty-two million people, a figure slightly over the population estimate of Texas for 2019,<sup>6</sup> would have taken a cruise in 2020 had the COVID-19 pandemic not temporarily disrupted global travel.<sup>7</sup> Most of those passengers would have been from the United States, as a report published by the Florida-Caribbean Cruise Association revealed that slightly over 52 percent of cruise passengers were sourced from the United States in 2016.<sup>8</sup> These numbers should come as no surprise considering all the offerings cruise ships have—

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271249716 (interview with Janet Powers); *Cruise Ship Registry, Flag State Control, Flag of Convenience*, CRUISEMAPPER (Nov. 26, 2015), <https://www.cruisemapper.com/wiki/758-cruise-ship-registry-flags-of-convenience-flag-state-control> [hereinafter *Cruise Ship Registry*] (collection of registration information for various cruise ships).

2. Joel Seidman & Mike Brunker, *Data on Cruise Ship Crime Still Falls Short*, GAO Finds, NBC NEWS (Jan. 14, 2014, 2:53 AM), <https://www.nbcnews.com/news/world/data-cruise-ship-crime-still-falls-short-gao-finds-flna2D11921779>.

3. WPTV, *supra* note 1.

4. *Id.*

5. *Id.*

6. *QuickFacts: Texas*, U.S. CENSUS BUREAU, <https://www.census.gov/quickfacts/TX> (last visited Feb. 21, 2021).

7. Press Release, Cruise Lines Int'l Ass'n, CLIA Releases 2020 State of the Cruise Industry Outlook Report (Dec. 12, 2019), <https://cruising.org/en/news-and-research/press-room/2019/december/clia-releases-2020-state-of-the-cruise-industry-outlook-report>.

8. THE FLORIDA-CARIBBEAN CRUISE ASS'N, 2018 CRUISE INDUSTRY OVERVIEW (2018), <https://www.f-cca.com/downloads/2018-Cruise-Industry-Overview-and-Statistics.pdf>.

all-you-can-eat buffets, live entertainment, racetracks, and even rollercoasters.<sup>9</sup>

How have cruise ships become the wild, wild west in disguise? The answer lies largely in flags of convenience. While the term flag of convenience is relatively new, the practice has been around since at least the 1800s.<sup>10</sup> Just as drivers need to register their cars with the Department of Motor Vehicle, shipowners need to register their ships with a country. Unlike owners of cars, who must typically register in the state they drive in, owners of ships are often able to exercise significant discretion in choosing their state of registry. The country a ship is registered in is known in maritime parlance as the “flag state.”<sup>11</sup> For centuries, crafty shipowners have sailed their vessels under flags of foreign states for one reason or another.<sup>12</sup> For example, in the 1800s, United States slave trading ships, seeking to avoid a slave suppression treaty, flew flags of those countries that were not parties to the treaty.<sup>13</sup> As regulations in highly developed countries like the United States became more stringent, lax registries like those of Panama became more appealing.<sup>14</sup> These less onerous registries came with economic benefits in the form of tax savings and decreased operating costs, and choosing to fly under the flag of such a country has been deemed “flying a flag of convenience.”<sup>15</sup>

Ships are subject to the laws of the country they are flagged under, and the flag state is charged with the responsibility of regulating the ships. Often, the laws in these countries are lax and regulation itself is lacking.<sup>16</sup> Developing countries do not have the resources to ensure that their ships comply with the applicable laws or to punish incompliant ships. The inability of countries to regulate ships registered under their flags has led to crime going unpunished.

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9. Connie Motz, *8 Things You Didn't Know About Norwegian's Race Tracks*, NORWEGIAN CRUISE LINE: BLOG (Oct. 16, 2018), <https://www.ncl.com/travel-blog/things-you-didnt-know-about-norwegians-race-tracks> (Norwegian Bliss and Norwegian Joy have twin racetracks); Sandra Latham, *27 Craziest Cruise Ship Amenities*, CHEAPISM (Jan. 22, 2020), <https://blog.cheapism.com/cruise-perks/>.

10. David F. Matlin, Note, *Re-evaluating the Status of Flags of Convenience Under International Law*, 23 VAND. J. TRANSNAT'L L. 1017, 1019 (1991).

11. *Cruise Ship Registry*, *supra* note 1.

12. Matlin, *supra* note 10, at 1018.

13. *Id.* at 1019.

14. *Id.* at 1019–20.

15. *Id.* at 1019.

16. *Id.*

Furthermore, the general rule that ships are subject to the laws of the country that they are registered under has led to complications in prosecuting crimes that occur on the high seas.

There is a vicious cycle—shipowners “flag out” and flag under developing countries to avoid regulations that will cut their competitive edge in the global shipping market,<sup>17</sup> while developed countries such as the United States increase regulation of ships to prevent the abuses complained of. American citizens, unaware of the jurisdictional complexities that arise once their cruise ship is on the high seas, are lulled into a false sense of security. They believe that should anything happen to them during the cruise, they can turn to United States law enforcement. Unfortunately, under international law, the United States cannot prosecute crimes on foreign flagged ships once they are outside of United States jurisdiction.<sup>18</sup> Thus, American victims of crime on cruise ships often find themselves with no recourse. To date, there have been very few attempts to remedy this issue by the international community. One popular solution is to require that a “genuine link” exist between the state and the ship, but attempts to define what a genuine link entails have fallen flat due to a lack of consensus.<sup>19</sup> Solutions have been all but forthcoming, and sadly, there may not be a perfect solution at this moment that would be feasible for all the various shipping activities. After all, the burdens that cargo transport ships are under differ from those of cruise ships. This Note only covers the cruise industry, and thus, all solutions posed should only apply to the cruise industry.

Taking all considerations into account, this Note will argue for two solutions. At the international level, international law should require ship owners to register only with maritime powers that are prepared to supervise their ships around the world. Until or unless that occurs, the United States should amend the current statutory regime so that a cruise ship that either embarks or disembarks passengers in

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17. *Pacific Mail Sells 5 Liners to Ship Trust*, N.Y. TRIB., Aug. 14, 1915, at 1 (The Pacific Mail Steamship Company ceased operations in the Far East after passage of the Seamen’s Act of 1915, stating that the Act rendered them unable to compete with Japanese ships).

18. See United Nations Convention on the High Seas art. 6, Apr. 29, 1958, 450 U.N.T.S. 82 (article 6 states that ships will sail under the flag of one State and unless provided otherwise, be subject to the exclusive jurisdiction of the State of the flag they fly on the high seas).

19. See Matlin, *supra* note 10, at 1033, 1035 (Geneva Convention on the High Seas did not define the term because there was no agreed upon definition and United Nations Convention on the Law of the Sea (UNCLOS) failed because there was lack of consensus).

any U.S. port must be U.S. flagged. Part II will provide the requisite background by first explaining ship nationality and registry requirements. It will provide an explanation of the freedom-of-the-seas doctrine and the current international framework. Finally, it will discuss the different principles of jurisdiction. Part III will explain why the current regime is not adequate to protect United States citizens. The interplay between the territoriality principle and flags of convenience blocks the United States from effectively protecting its citizens when they are victims of crime on the high seas. The Note will also propose two solutions, one at the international level, and one at the “local” level. Furthermore, it will discuss why other commonly stated solutions may not work as well. Next, it will demonstrate how the solutions proposed can address the concern of protecting United States citizens by providing an avenue to justice. Finally, Part IV concludes this Note.

## II. BACKGROUND

### *A. Crimes and Serious Incidents Onboard Cruise Ships*

It is not uncommon for a cruise ship to be described as a “floating city.”<sup>20</sup> The analogy is appropriate considering Royal Caribbean’s *Oasis of the Seas* is so large that designers divided up the vessel into neighborhoods so that passengers could better conceptualize their surroundings.<sup>21</sup>

Like any city, cruise ships also have their share of crime. Unlike actual cities in the United States, it is difficult to understand exactly how much crime occurs aboard cruise ships. This is largely due to reporting loopholes, which are beyond the scope of this Note.<sup>22</sup> It suffices to note that under the Cruise Vessel Security and Safety Act (CVSSA),<sup>23</sup> cruise lines must only report crimes involving “homicide, suspicious death, a missing United States national, kidnapping, assault with serious bodily injury, [and sexual assault].”<sup>24</sup> Unfortunately, the

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20. Ralph Grizzle, *Floating Cities at Sea*, CRUISE SPECIALISTS BLOG, <https://www.cruisespecialists.com/blogs/worlds-largest-cruise-ships/> (last visited Feb. 21, 2021).

21. *Id.*

22. See Tiffany L. Peyroux, Comment, *The Cruise Vessel Security and Safety Act of 2010 Founders on Its Maiden Voyage*, 13. LOY. MAR. L.J. 74, 86–87 (2014).

23. Cruise Vessel Security and Safety Act of 2010, Pub. L. No. 111-207, 124 Stat. 2243 (codified as amended at 42 U.S.C. §§ 3507–3508).

24. *Id.* (quoting 46 U.S.C. § 3507(g)(3)(A)(i) (2012)).

CVSSA does not define a “suspicious” death, and sexual assaults onboard are commonly reframed as “groping” or “inappropriate touching” by cruise line authorities, neither of which are required to be reported.<sup>25</sup> Furthermore, cruise lines can take advantage of gray areas to avoid reporting. For example, assaults do not have to be reported unless there is a serious bodily injury.<sup>26</sup> The cruise lines make the determination of whether an assault is one with serious bodily injury.<sup>27</sup> Also, passengers who are victims of a crime may choose not to report the crime to cruise ship authorities or the police. For example, the most common occurring crime on cruise ships, sexual assault,<sup>28</sup> is known for being a crime that often goes unreported.<sup>29</sup> Thus, the crime statistics collected by the Department of Transportation are underreporting the amount of crime that really occurs on cruise ships. In 2019, the cruise line industry reported a total of 130 crimes, and 101 of those crimes were sexual assaults.<sup>30</sup> Due to the above factors, it is very likely that these statistics are underreporting the amount of crime that actually occurred in 2019. However, it is unclear just how serious the underreporting is.

While there is a dispute as to how rampant crime on cruise ships really is, focusing on just the number of crimes that occur is misguided. Even if the crime rate onboard a cruise ship is lower than in a city in the United States, this does not negate the jurisdictional issues that arise when crime does occur. These issues make prosecution much more unlikely than in an average city in the United States. Each and every victim of a crime deserves justice, and victims

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25. *Patriot Act with Hasan Minhaj: The Real Cost of Cruises*, NETFLIX, <https://www.netflix.com/watch/80991187?trackId=200257859> (last visited Feb. 21, 2021) [hereinafter Netflix’s *Patriot Act with Hasan Minhaj*].

26. Stephen Cousins, *Cruise Ship Crime Wave*, SAFETY AT SEA (May 19, 2020), <https://safetyatsea.net/news/2020/cruise-ship-crime-wave/>.

27. *Id.*

28. Mark Matousek, *Sexual Assault Is the Most Common Crime Reported on Cruise Ships*, BUS. INSIDER (Apr. 10, 2019, 2:18 PM), <https://www.businessinsider.com/most-common-cruise-ship-crime-sexual-assault-2019-4>.

29. Cameron Kimble & Inimai M. Chettiar, *Sexual Assault Remains Dramatically Underreported*, BRENNAN CTR. FOR JUST. (Oct. 4, 2018), <https://www.brennancenter.org/our-work/analysis-opinion/sexual-assault-remains-dramatically-underreported> (according to a Justice Department analysis of violent crime in 2016, nearly 80 percent of rapes and sexual assaults go unreported and at the same time, false accusations of rape or sexual assault are rare).

30. See *Cruise Line Incident Reports*, U.S. DEP’T OF TRANSP., <https://www.transportation.gov/mission/safety/cruise-line-incident-reports> (last visited Feb. 21, 2021) (see quarterly 2019 reports).

on a cruise ship can feel like they are without a country “where law enforcement is concerned.”<sup>31</sup>

### B. *History of Ship Registration and Nationality*

To understand how flags of convenience create jurisdictional issues and thus put up roadblocks to prosecution, it is important to understand ship registration, nationality, and the repercussions that arise from both.

Although “nationality” and “registration” are used as if they are synonymous, the terms have different meanings.<sup>32</sup> Nationality is the relationship between a state and a vessel, while registration refers to the actual process of entering information in the public records.<sup>33</sup> In today’s world, registration is part of the determination of a vessel’s nationality.<sup>34</sup> The concept of ship registration “has its origins in the laws of imperial Rome.”<sup>35</sup> At the time, ship registries included the ship’s name, the shipowner’s name, and the ship’s tonnage.<sup>36</sup>

Vessel nationality is a slippery concept and over time, many approaches to determining nationality have emerged. One test defines nationality solely in terms of ownership.<sup>37</sup> For example, in *Chartered Mercantile Bank of India v. Netherlands Steam Navigation Co.*,<sup>38</sup> the English Court of Appeal held that the mere fact that a ship was registered in Holland “d[id] not prevent her [from] being a British ship. . . . [i]f she belong[ed] absolutely and entirely to English owners, she [was] an English ship before she [was] registered.”<sup>39</sup> Another approach was defining a ship’s nationality in terms of where the ship

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31. Asia N. Wright, *High Seas Ship Crimes*, 7B LOY. MAR. L.J. 1, 9 (2009) (quoting *Anderson Cooper 360 Degrees: Death on the High Seas?* (CNN television broadcast Mar. 6, 2006, 10:00 PM), <http://transcripts.cnn.com/TRANSCRIPTS/0603/06/acd.01.html>).

32. RICHARD COLES & EDWARD WATT, *SHIP REGISTRATION LAW AND PRACTICE* 3 (2d ed. 2009).

33. *Id.* at 1–2.

34. *Id.* at 2.

35. *Id.* at 3.

36. *Id.*

37. *Chartered Mercantile Bank of India v. Neth. India Steam Navigation Co.* (1883) 10 QBD 521 at 535–36 (Eng.) (a collision case involving a Dutch-registered ship owned and controlled by British subjects). The court stated it was “absurd to suppose that the mere fact of carrying the Dutch flag makes [the defendant’s ship] a Dutch ship. Pirates carried the flag of every nation, but they were hanged by every nation notwithstanding.” *Id.* at 535.

38. (1883) 10 QBD 521 (Eng.).

39. *Id.* at 535–36.



was built.<sup>40</sup> The French Acte de Navigation of 1793 required every French ship to be French built.<sup>41</sup> While the owners of ships built in France could choose to register elsewhere, the key was that the French registry was closed off to those whose ships were not built in France. Frequently, a ship owner's nationality has been proposed as the appropriate test for determining a vessel's nationality.<sup>42</sup> For example, the Danish Merchant Shipping Act states that "[i]n order for a ship to be considered as Danish and fly the Danish flag, the owner of the ship shall be Danish."<sup>43</sup> Again, Danish ship owners could register their ships elsewhere, but the Danish registry was closed off to those who were not Danish.

Ultimately, international law grants each state the right to stipulate the conditions for nationality.<sup>44</sup> This includes land-locked states.<sup>45</sup> The United States has recognized the principle that each sovereign state has the right to delineate the conditions for granting a ship nationality in the seminal case of *Lauritzen v. Larsen*.<sup>46</sup> This principle was stated in the first Geneva Convention on the High Seas in 1958.<sup>47</sup> The 1958 Convention also required that ship nationality be based on a "genuine link" requirement,<sup>48</sup> a principal which was restated in the 1982 United Nations Convention on the Law of the Sea (UNCLOS), article 91 with a slight restriction:

Every State shall fix the conditions for the grant of its nationality to ships, for the registration of ships in its territory, and for the right to fly its flag. Ships have the nationality of the State whose flag they are entitled to fly. There must exist a genuine link between the State and the ship.<sup>49</sup>

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40. Rhea Rogers, World Maritime University, Ship Registration: A Critical Analysis 5 (Aug. 30, 2010) (M.S. dissertation, World Maritime University), <http://commons.wmu.se/alldissertations/447>.

41. *Id.*

42. COLES & WATT, *supra* note 32, at 3.

43. Merchant Shipping Act, Consolidated Act, 2018, art. 1 (Act No. 1505/2018) (Den.).

44. United Nations Convention on the Law of the Sea, Dec. 10, 1982, 1833 U.N.T.S. 396.

45. *Id.*

46. 345 U.S. 571, 584 (1953) ("Each state under international law may determine for itself the conditions on which it will grant its nationality to a merchant ship, thereby accepting responsibility for it and acquiring authority over it.").

47. United Nations Convention on the High Seas, *supra* note 18, art. 5.

48. *Id.*

49. United Nations Convention on the Law of the Sea, *supra* note 44, art. 91.

Unfortunately, in practice, the “genuine link” provision has not had any effect. The requirement has never been enforced because the term itself has remained undefined, leading to difficulty in its interpretation and implementation.<sup>50</sup> This uncertainty has been recognized by the international community since the 1958 Convention, and the report of the Senate Committee on Foreign Relations (1960) pointed out that the “‘genuine link’ requirement need not have any effect upon the practice of registering American built or owned vessels in such countries as Panama or Liberia. The existence of a ‘genuine link’ between the state and the ship is not a condition of recognition of the nationality of a ship.”<sup>51</sup> Countries like Panama have taken advantage of the lack of enforcement and opened up their registries to all, regardless of nationality or ship ownership.<sup>52</sup> For example, the General Merchant Marine Act of Panama states that “any individual or legal entity may, without any special requirement as to nationality or domicile, register one or more vessels owned by it, in the Merchant Marine.”<sup>53</sup> Since these registries are open to all, regardless of nationality or ship ownership, they have been dubbed “open registries.”<sup>54</sup> They stand in contrast to “closed registries,” such as that of the United States, which are only open to citizens of that country.<sup>55</sup>

Today, open registries have become synonymous with “lax labor, safety, and environmental codes.”<sup>56</sup> Since ships are subject to the law of the country they are registered under, registering abroad comes with significant financial benefits.<sup>57</sup> For example, cruise companies are able to work around the United States’ employment laws and pay their workers as little as \$2.27 per hour, an underpayment that they would not get away with if they were registered under the United

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50. Matlin, *supra* note 10, at 1035 (Geneva Convention on the High Seas did not define the term because there was no agreed upon definition and UNCLOS failed because there was lack of consensus).

51. 106 CONG. REC. 11,190 (1960) (presentation of Executive Report No. 5 by the Senate Committee on Foreign Relations).

52. Matlin, *supra* note 10, at 1043–44.

53. General Merchant Marine, 2008, art. 3 (Act No. 57/2008) (Pan.).

54. H. Edwin Anderson, III, *The Nationality of Ships and Flags of Convenience: Economics, Politics, and Alternatives*, 21 TUL. MAR. L.J. 139, 151 (1996).

55. *Id.*

56. Maria J. Wing, Comment, *Rethinking the Easy Way Out: Flags of Convenience in the Post-September 11th Era*, 28 TUL. MAR. L.J. 173, 176–77 (2003).

57. Netflix’s *Patriot Act with Hasan Minhaj*, *supra* note 25.

States flag.<sup>58</sup> Open-registry countries compete among one another by consistently lowering requirements and offering cheaper services.<sup>59</sup>

As an example of how this practice plays out, Carnival Corporation & plc is a dual listed company consisting of Carnival Corporation, incorporated in Panama in 1972, and Carnival plc, incorporated in England and Wales in 2000.<sup>60</sup> The businesses of the two corporations are combined and “operate as if they are a single economic enterprise with a single senior executive management team and identical Boards of Directors, but each has retained its separate legal identity.”<sup>61</sup> Furthermore, Carnival Corporation has its headquarters in Miami, Florida.<sup>62</sup> Carnival Cruise Line is the wholly owned subsidiary of Carnival Corporation & plc.<sup>63</sup> Carnival Cruise Line is also headquartered in Florida, but most of its ships fly under the flag of Panama.<sup>64</sup> The only link to Panama is the fact that Carnival Corporation was incorporated there. Although “genuine link” is undefined, it would become obsolete if such a link could be established by simply incorporating in the flag state.

### C. *General International Law Principles at Play*

Now that the concept of registration and nationality have been explained, the final link in the chain is examining international law to understand why nationality, and thus registration, can have such immense repercussions for jurisdiction over events occurring on international waters.

Historically, the oceans have been governed by the freedom-of-the-seas doctrine, which limited “national rights and jurisdiction over the oceans to a narrow belt of sea surrounding a nation’s coastline. The remainder of the seas was proclaimed to be free to all and belonging

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58. Zachary Crockett, *The Economics of Cruise Ships*, THE HUSTLE (Mar. 15, 2020), <https://thehustle.co/the-economics-of-cruise-ships/>.

59. *Id.*

60. Annual Report (Form 10-K), Carnival Corp. & PLC (Jan. 29, 2013), <https://www.sec.gov/Archives/edgar/data/815097/000119312513027239/d387954d10k.htm>.

61. *Id.*

62. *Id.*

63. *Corporate Information*, CARNIVAL CORP. & PLC, <https://www.carnivalcorp.com/corporate-information/our-brands> (last visited Feb. 21, 2021).

64. *Carnival Cruise Line*, WIKIPEDIA, [https://en.wikipedia.org/wiki/Carnival\\_Cruise\\_Line#Current\\_fleet](https://en.wikipedia.org/wiki/Carnival_Cruise_Line#Current_fleet) (last visited Feb. 21, 2021).

to none.”<sup>65</sup> “In 1945, President Harry . . . Truman, responding in part to pressure from domestic oil interests, . . . extended United States jurisdiction over all natural resources on the nation’s continental shelf.”<sup>66</sup> President Truman only extended United States jurisdiction over the natural resources on the seabed and below, and there was no other legal effect. Other nations, not wanting to fall behind, followed suit.<sup>67</sup> As technology advanced, man was able to exploit more of the ocean than ever before. Large fishing vessels were able to fish far away from native shores, “staying away from port for months at a time.”<sup>68</sup> Offshore oil drilling opened up conflicts between countries as to how the continental shelf should be carved between them.<sup>69</sup> It was against this backdrop of chaos that the United Nations held the United Nations Conferences on the Law of the Seas.<sup>70</sup> In total, there were three conferences; the final one convened in 1973 and lasted until 1982.<sup>71</sup> The result of the conferences were conventions creating a comprehensive regime of law and order in the world’s oceans and seas, establishing rules governing all uses of the oceans and their resources.<sup>72</sup> As shown earlier, UNCLOS set guidelines for many aspects of shipping, including ship registration.

The freedom-of-the-seas principle survived for the most part, but in order to curb anarchy and abuse, UNCLOS created a framework for the exercise of that freedom, looking to individual states to ensure and enforce compliance through the jurisdiction exercised over their national vessels.<sup>73</sup> Thus, “freedom of navigation, on which the law of

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65. *The United Nations Convention on the Law of the Sea (A Historical Perspective)*, DIV. FOR OCEAN AFFS. AND THE L. OF THE SEA, UNITED NATIONS (1998), [https://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm#Historical%20Per%20pective](https://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm#Historical%20Per%20pective) [hereinafter *UNCLOS: A Historical Perspective*].

66. *Id.*

67. *See id.*

68. *Id.*

69. *Id.*

70. *Id.*

71. *Id.*

72. *Id.*

73. United Nations Convention on the Law of the Sea, *supra* note 44, art. 94. UNCLOS did not create the concept of a flag state regulating its ships. That has been an element of international law for centuries. The 1958 High Seas Treaty repudiated the holding of the *Lotus* case, establishing that flag state jurisdiction was exclusive. This was repeated by UNCLOS. *See S.S. Lotus*, 1927 P.C.I.J. (ser. A) No. 10.

the sea is premised, belongs to states, not individuals.”<sup>74</sup> Moreover, all vessels sailing the high seas must possess a national character.<sup>75</sup>

As part and parcel of requiring individual states to ensure and enforce compliance with UNCLOS, UNCLOS article 92 granted exclusive jurisdiction to the flag state over its vessels on the high seas.<sup>76</sup> In relevant part, it states that:

Ships shall sail under the flag of one State only and, save in exceptional cases expressly provided for in international treaties or in this Convention, shall be subject to its exclusive jurisdiction on the high seas. A ship may not change its flag during a voyage or while in a port of call, save in the case of a real transfer of ownership or change of registry.<sup>77</sup>

Article 92 prescribes what is known as the “flag state rule” and demonstrates that vessel registration has consequences beyond merely forming a relationship between the state and the vessel. The law of the flag generally controls and is an important factor in determining which law will apply when there is a conflict of laws. Although jurisdiction may seem like an open and shut case considering the general rule, in practice, it is anything but.

#### *D. Jurisdictional Principles*

##### 1. Jurisdictional Principle at Play Changes Depending on a Ship’s Location

Although the high seas are open to all states, there would be chaos in the absence of authority. Thus, on the high seas, a cruise ship is subject to the exclusive jurisdiction of the flag state.<sup>78</sup>

However, cruise ships sail all the seas, including sailing into the territorial waters of various countries, and it is important to understand how and when the law of the flag yields. The ocean is carved into the following areas: internal waters, the territorial sea, the contiguous

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74. Allyson Bennett, Note, *That Sinking Feeling: Stateless Ships, Universal Jurisdiction, and the Drug Trafficking Vessel Interdiction Act*, 37 YALE J. INT’L L. 433, 439 (2012).

75. COLES & WATT, *supra* note 32, at 1.

76. United Nations Convention on the Law of the Sea, *supra* note 44, art. 92.

77. *Id.*

78. *See id.*

zone, the exclusive economic zone, and the high seas.<sup>79</sup> As can be gleaned from the name, internal waters are marine spaces landward of the baseline where the coastal state has jurisdiction to enforce domestic regulations.<sup>80</sup> Foreign vessels have no right of passage within internal waters.<sup>81</sup>

From the baseline out to twelve nautical miles, a coastal state has unlimited jurisdiction over certain activities.<sup>82</sup> This region is known as the territorial sea.<sup>83</sup> This right is given to all coastal states.<sup>84</sup> Although the coastal state has unlimited jurisdiction, UNCLOS provides the following limitation:

The criminal jurisdiction of the coastal State should not be exercised on board a foreign ship passing through the territorial sea to arrest any person or to conduct any investigation in connection with any crime committed on board the ship during its passage, save only in the following cases:

- a) if the consequences of the crime extend to the coastal State;
- b) if the crime is of a kind to disturb the peace of the country or the good order of the territorial sea;
- c) if the assistance of the local authorities has been requested by the master of the ship or by a diplomatic agent or consular officer of the flag State; or
- d) if such measures are necessary for the suppression of illicit traffic in narcotic drugs or psychotropic substances.<sup>85</sup>

Thus, even where the coastal state has jurisdiction, UNCLOS cautions exercise of that jurisdiction where it may interfere with another sovereign's authority.

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79. Simon O. Williams, *Law of the Sea Mechanisms: Examining UNCLOS Maritime Zones*, THE MAR. EXEC. (Dec. 1, 2014, 10:02 AM), <https://www.maritime-executive.com/article/Law-of-the-Sea-Mechanisms-Examining-UNCLOS-Maritime-Zones-2014-12-01>.

80. *Id.*

81. Anne Bardin, *Coastal State's Jurisdiction over Foreign Vessels*, 14 PACE INT'L L. REV. 27, 30 (2002).

82. Williams, *supra* note 79.

83. *Id.*

84. *Id.*

85. United Nations Convention on the Law of the Sea, *supra* note 44, art. 27.

The contiguous zone extends another twelve nautical miles past the territorial zone, extending enforcement jurisdiction of the coastal state to a maximum of twenty-four nautical miles from the baseline for the purposes of preventing or punishing violations in four specific areas: customs, fiscal, immigration, or sanitary regulation.<sup>86</sup> The contiguous zone is the beginning of fading of sovereign authority. A coastal state cannot impose other laws, such as criminal laws, not identified in the UNCLOS provisions.

The exclusive economic zone can extend out to 200 nautical miles from the baseline.<sup>87</sup> The coastal state has all the rights to “exploit, develop, manage and conserve” all the various resources to be found in the waters.<sup>88</sup> This limits the powers of the sovereign state over ships—if the activity isn’t related to resources, the flag state rule applies. As with the contiguous zone, a coastal state cannot impose other laws, such as criminal laws, not identified in the UNCLOS provisions.

Beyond the exclusive economic zone lie the high seas.<sup>89</sup> Finally, this is the part of the ocean that is to be open and freely available to everyone. Here, the flag state principle applies, and the flag state has exclusive jurisdiction over its ships. However, it bears keeping in mind that with respect to cruise ships and crime, exclusive flag state jurisdiction sets in right outside of territorial waters.

## 2. Legislative and Enforcement Jurisdiction

Next, there are two types of jurisdiction that give a state the authority to proscribe and enforce the state’s law. Legislative jurisdiction refers to “a state’s authority under international law to assert the applicability of its criminal law to given conduct” through legislation, executive decree, or judicial ruling.<sup>90</sup> “[E]xecutive’ jurisdiction . . . refers to a state’s authority under international law . . . to apply its criminal law[] through police[,] . . . executive action, and . . . the courts.<sup>91</sup> Although the two types of jurisdiction are related, they

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86. *UNCLOS: A Historical Perspective*, *supra* note 65; Williams, *supra* note 79.

87. *UNCLOS: A Historical Perspective*, *supra* note 65.

88. *Id.*

89. *Id.*

90. Roger O’Keefe, *Universal Jurisdiction: Clarifying the Basic Concept*, 2 J. INT’L CRIM. JUST. 735, 736 (2004).

91. *Id.*

are also independent of each other in that the legality of the state in proscribing conduct does not affect the legality of the enforcement of a state's criminal law and vice versa. For example, Congress could pass a law that makes it a crime to assault an American citizen on the high seas. However, the ability to prosecute such a crime is not automatically guaranteed, as this Note will show.

States consider five principles when exercising prescriptive jurisdiction.<sup>92</sup> First, there is the territoriality principle, which stands for the idea that a state “may exercise jurisdiction with respect to all persons or things within its territory.”<sup>93</sup> The territoriality principle should sound familiar; the flag-state rule alluded to earlier is a derivative of the territoriality principle. The flag-state rule is somewhat derived from the theory that “ships on the high seas are regarded as the extension of the territory of their flag state and placed under the exclusive jurisdiction of the latter by customary international law and international conventions.”<sup>94</sup> The theory has roots in the legal fiction that a ship is a “detached piece” of a state's territory.<sup>95</sup> As the leading treatise on admiralty law recognized, “[t]he flag-state rule is so pervasive that under certain circumstances the flag state's jurisdiction extends even *into* the territorial waters of another state.”<sup>96</sup>

Second, the nationality principle determines jurisdiction based on the offenders' nationality.<sup>97</sup> Essentially, a state is allowed to punish the criminal conduct of its citizens, regardless of where it occurs. Next, the passive personality principle allows citizens to carry the protection of their state's law with them no matter where they go by granting jurisdiction to a state over offenses committed against its nationals.<sup>98</sup> Fourth, the protective principle allows a state to exercise jurisdiction

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92. Martin Davies, *Obligations and Implications for Ships Encountering Persons in Need of Assistance at Sea*, 12 PAC. RIM L. & POL'Y J. 109, 116 (2003).

93. 2 RICHARD J. NIKAS, *BENEDICT ON ADMIRALTY: JURISDICTION AND PRINCIPLES* § 112 (2020 ed.).

94. *Id.*

95. Christopher C. Joyner, *International Extradition and Global Terrorism: Bringing International Criminals to Justice*, 25 LOY. L.A. INT'L & COMPAR. L. REV. 493, 503 (2003).

96. NIKAS, *supra* note 93, § 112; see United Nations Convention on the Law of the Sea, *supra* note 44, art. 27, for UNCLOS's limitations on the criminal jurisdiction of the coastal state when a foreign-flagged ship sails through the coastal state's territorial waters.

97. Joyner, *supra* note 95, at 503.

98. *Id.* at 504.



over acts considered prejudicial to the state's security interest no matter where the act takes place.<sup>99</sup> Finally, the universality principle "recognizes that some acts are so . . . widely condemned that any state may prosecute an offender" upon obtaining custody.<sup>100</sup>

To expel confusion, the FBI has attempted to clarify when the United States has jurisdiction over investigating a crime at sea. According to official testimony from the FBI that was delivered by Deputy Assistant Director Salvador Hernandez before the House Committee on Transportation and Infrastructure, the United States has jurisdiction in four scenarios:

- [t]he ship, regardless of flag, is a U.S.-owned vessel, either whole or in part, regardless of the nationality of the victim or the perpetrator, when such vessel is within the admiralty and maritime jurisdiction of the United States and out of the jurisdiction of any particular state;
- [t]he offense by or against a U.S. national was committed outside the jurisdiction of any nation;
- [t]he crime occurred in the U.S. territorial sea (within 12 miles of the coast), regardless of the nationality of the vessel, the victim or the perpetrator; or
- [t]he victim or perpetrator is a U.S. national on any vessel during a voyage that departed from or will arrive in a U.S. port.<sup>101</sup>

The statement derived from the principal law under which the United States exercises its Special Maritime and Territorial Jurisdiction, Section 7 of Title 18 of the U.S. Code.<sup>102</sup> However, as the FBI admits, there are numerous other facts that come into play in determining the FBI's role and ability to investigate.<sup>103</sup> The laws of other nations must be considered, especially if the incident involves citizens or interests

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99. *Id.*

100. *Id.*

101. Testimony of Salvador Hernandez, Statement Before the House Committee on Transportation and Infrastructure, Subcommittee on Coast Guard and Maritime Transportation, Fed. Bureau of Investigation (Mar. 27, 2007), <https://archives.fbi.gov/archives/news/testimony/crimes-against-americans-on-cruise-ships> (the first scenario allows the FBI to investigate crime when cruise ships pull into a U.S. port, regardless of where the crime occurred).

102. *Id.*

103. *Id.*; 18 U.S.C. § 7(8) (2018) ("To the extent permitted by international law, any foreign vessel during a voyage having a scheduled departure from or arrival in the United States with respect to an offense committed by or against a national of the United States.").

of other countries. The FBI's ability to investigate is limited by "diplomatic relations with other involved countries, the existence and applicability of any treaties with these countries, and the extent to which the [United States is] ultimately dependent upon another country's mutual cooperation and assistance."<sup>104</sup> For example, without the consent of the flag state, the United States cannot board a foreign flag vessel on the high seas to enforce U.S. criminal laws except for a limited number of recognized universal offenses.<sup>105</sup> Instead, the FBI will normally attempt to board the vessel as it docks and conduct crime-scene investigation then.<sup>106</sup> Unfortunately, this sometimes can lead to evidence loss, as the next port of call may be days away.<sup>107</sup> Furthermore, there have been reports of suspects escaping at the next port of call before the FBI can arrest them.<sup>108</sup> Sometimes, cruise ships have actually helped the suspect escape.<sup>109</sup> In cases involving sexual assault of a passenger by a crew member, cruise ships have allowed the suspect crew member to disembark at the next port of call, escaping the hands of the FBI.<sup>110</sup>

### III. CRITIQUE AND PROPOSALS OF THE EXISTING LAW

#### A. *Critique of the Passenger Vessel Services Act and the Jones Act*

The United States has attempted to discourage its citizens from flagging abroad since the 1800s. Unfortunately, Congress's attempts to deter flagging abroad have been largely ineffective.

The Passenger Vessel Services Act of 1886 (PVSA)<sup>111</sup> prohibits vessels from transporting passengers between United States ports unless the vessel is either wholly owned by United States citizens and

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104. *International Maritime Security: Joint Hearing Before the Subcomm. on Nat'l Sec., Emerging Threats, and Int'l Rels., Subcomm. on Crim. Just., Drug Pol'y, and Hum. Res., Comm. on Gov't Reform*, 109th Cong. (2005) (statement of Chris Swecker, Assistant Director, Criminal Investigation Division, Federal Bureau of Investigation).

105. *Id.*; Joyner, *supra* note 95, at 504.

106. Douglas Frantz, *On Cruise Ships, Silence Shrouds Crimes*, N.Y. TIMES (Nov. 16, 1998), <https://archive.nytimes.com/www.nytimes.com/library/national/111698cruise-ship-crime.html>.

107. *Id.*

108. *Id.*

109. *Id.*

110. *Id.* (a 26-year-old Carnival employee was raped by one of her coworkers; two days later, the ship docked in Miami and arrangements were made for the perpetrator to fly back to Italy without being questioned).

111. Passenger Vessel Services Act of 1886, Pub. L. No. 49-421, 24 Stat. 79 (codified as amended at 46 U.S.C. § 55103).

“has been issued a certificate of documentation with a coastwise endorsement under chapter 121 or is exempt from documentation but would otherwise be eligible for such a certificate and endorsement.”<sup>112</sup> The PVSA imposes a hefty \$300 per passenger fine on offending vessels.<sup>113</sup> In 1920, Congress passed the Jones Act,<sup>114</sup> which, among other things, prohibited vessels from transporting merchandise between United States’ ports unless the vessel is either wholly owned by United States citizens or issued an exemption.<sup>115</sup> Together, the PVSA and Jones Act exclude foreign ships from entering the United States’ coastwise trade. Considering the sheer number of passengers that cruise ships carry, the PVSA mandated fine is a sufficient deterrent for large cruise ships. However, it is crucial to remember that these laws apply to transportation between ports in the United States. A foreign flagged vessel that picks up and drops off its passengers at the same port is not in violation of the law. Furthermore, through 19 C.F.R. § 4.80a, cruise ships have managed to find a loophole that enables them to embark passengers at one port of call and disembark them at a different port of call. Section 4.80a of 19 C.F.R. states that for a foreign-flagged vessel that embarks a passenger at a United States’ port:

If the passenger is on a voyage to one or more coastwise ports and a distant foreign port or ports (whether or not the voyage includes a nearby foreign port or ports) and the passenger disembarks at a coastwise port, there is no violation of the coastwise law provided the passenger has proceeded with the vessel to a distant foreign port.<sup>116</sup>

In essence, all the cruise ship must do is visit a “distant foreign port.”<sup>117</sup> Section 4.80a defines a “distant foreign port” as any foreign port that is not a nearby foreign port.<sup>118</sup> Nearby foreign ports are defined as those “in North America, Central America, the Bermuda Islands, or the West Indies (including the Bahama Islands, but not

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112. 46 U.S.C. § 55103(a) (2012).

113. *Id.* § 55102.

114. Merchant Marine Act of 1920, Pub. L. No. 66-261, 41 Stat. 988 (codified as amended at 46 U.S.C. § 55102).

115. 46 U.S.C. § 55102(b)(2).

116. 19 C.F.R. § 4.80a(b)(3) (2020).

117. *Id.*

118. *Id.* § 4.80a(a)(3).

including the Leeward Islands of the Netherlands Antilles, i.e., Aruba, Bonaire, and Curacao).<sup>119</sup> “A port in the U.S. Virgin Islands shall be treated as a nearby foreign port.”<sup>120</sup> For an industry that appeals to consumers precisely because of the convenient journey to a distant foreign land, this loophole is more helpful than hurtful.

Passengers are able to choose itineraries that allow them to visit all the cities on their wish list, and cruise lines are able to take advantage of a lucrative loophole.

*B. Proposal for Amendment to the PVSA and the Jones Act*

While the Jones Act, PVSA, and 19 C.F.R. § 4.80a currently operate in a manner that gives cruise ship operators a loophole, Congress could easily amend the law to close the loophole and help expand the United States’ jurisdiction to cover crimes occurring on the high seas. To close this loophole, Congress must pass amendments that do not exempt cruise ships from the heavy fines of the PVSA so long as they visit a distant port. Furthermore, Congress must extend the reach of both the Jones Act and the PVSA so that a foreign flagged cruise ship may not evade either Act by embarking and disembarking at the same point. These two amendments would force cruise ships to reflag under the United States. As such, they would be subject to United States Jurisdiction, and when American citizens are victims of crimes on the high seas, the United States would have the ability to prosecute perpetrators.

Cruise ship companies will argue that reflagging under the United States will result in additional expenses that may negatively impact profit margins or severely undercut their ability to compete. This is not true. First, the cruise line industry is a multi-billion-dollar industry. The three largest cruise line players, Carnival Corporation & plc, Royal Caribbean Cruises Ltd., and Norwegian Cruise Line HLD, collectively raked \$34.2 billion in revenue in 2018.<sup>121</sup> Ticket sales accounted for 62 percent of the revenue while onboard purchases, such as drinks, casino gambling, and spa treatments, made up the remaining 38 percent.<sup>122</sup> As Ross A. Klein, a professor at Memorial University

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119. *Id.* § 4.80a(a)(2).

120. *Id.*

121. Crockett, *supra* note 58.

122. *Id.*

of Newfoundland who has closely studied the cruise ship industry, remarked, “[t]hey can almost give a cabin away for free and still make a profit.”<sup>123</sup> Industry wide, the big three players enjoyed an average 17 percent margin.<sup>124</sup> Moreover, due to flying flags of convenience, the major cruise lines paid an average tax rate of 0.8 percent.<sup>125</sup> Although reflagging under the United States would impose additional costs, cruise lines could pass down a portion of the cost, if not all of it, to the consumer.

Second, the argument that cruise lines would not be able to compete is also easily dismantled. An amendment to the PVSA and Jones Act would affect all cruise ships that embark or disembark passengers in the United States. Thus, all the cruise line companies would be on even ground in that they would all have to reflag under the United States and be subject to United States employment, environmental, and safety laws. Furthermore, the large cruise companies would not face much competition from European or Asian cruise lines, which embark and disembark abroad. The appeal of a cruise is in its simplicity—most American cruise goers can take a short, domestic flight to port and explore many major cities. For a country with unsophisticated international travelers, a cruise is the most convenient way to visit exotic locations without the hassle of research, international flights, or dealing with language barriers.<sup>126</sup> American cruise goers would probably not respond to an increase in cruise ticket prices by flying to Europe and taking a cruise from there.

Finally, there is a real-life example that easily negates the cruise industry’s argument that flagging under the United States couldn’t possibly work. In 2005, Norwegian Cruise Line (NCL) launched the *Pride of America*, which was flagged under the United States.<sup>127</sup> NCL was forced to flag under the United States because it travels only from one Hawaiian port to another.<sup>128</sup> Thus, the *Pride of America* implicates both the PVSA and the Jones Act—it carries passengers and

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123. *Id.*

124. *Id.*

125. *Id.*

126. Erica Silverstein, *Top 10 Reasons to Take a Cruise*, ABC NEWS (Apr. 26, 2010, 9:24 AM), <https://abcnews.go.com/Travel/top-reasons-cruise-family-friendly-affordable-vacation-deals/story?id=11796434>.

127. Robert Smith, *Cruise Ship Sails Under American Flag*, NPR (June 18, 2005, 12:00 AM), <https://www.npr.org/templates/story/story.php?storyId=4709434>.

128. *Id.*

merchandise from one U.S. port to another. The *Pride of America* is not only evidence that cruise liners can flag under the United States and operate, it also is evidence that if forced to, cruise liners *will* flag under the United States.

In conclusion, while reflagging under the United States would lead to expenses, cruise lines could pass on part of the expense to consumers. Furthermore, considering that the cruise industry has avoided paying their fair share of taxes for years, an argument that propels that practice into the future is hardly convincing.

### *C. An International Solution*

In an ideal world, flags of convenience would not exist. Furthermore, ship registration would be limited only to those countries with sufficient prosecutorial and enforcement capabilities. As appealing as both solutions sound, there is an unfortunate dependency issue that stands in the way. Should there be an attempt by the international community to adopt either solution, there would be a vehement opposition from the developing countries that rely on income from their open registry systems, as well as the developed countries that have leveraged that need to their advantage. At this point in time, it is unlikely that either solution would occur.

Although the dependency issue is beyond the scope of this Note, a simple and brief explanation will help convey why flags of convenience are here to stay for the time being. The aim of open registry countries is to make a profit.<sup>129</sup> Although UNCLOS delegates responsibilities to flag states, nobody expects Liberia, “as part of its ‘flag of convenience’ service for United States-based cruise ships and their corporate owners, to extradite, try, and punish those who commit crime on board such ships.”<sup>130</sup> It is also worth noting that developed countries have successfully leveraged the threat of taking action against vessels flagged by developing countries so that they have influenced the internal politics of open registry countries.<sup>131</sup>

Not only do the governments of developed countries have a stake in the game, but so do entrepreneurs of developed countries. As a matter of fact, the creation of open registries was largely

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129. Anderson, *supra* note 54, at 165.

130. Mary Coombs, *State v. Stepansky*, 95 AM. J. INT’L L. 438, 442 (2001).

131. Anderson, *supra* note 54, at 160–61.

“masterminded” by entrepreneurs of developed countries.<sup>132</sup> For example, Edward Stettinius, a former Secretary of State, banded with a group of leading U.S. entrepreneurs who wanted a registry with even fewer requirements than that of the Panamanian registry.<sup>133</sup> Stettinius had been engaged in various commercial enterprises in Liberia and saw this as another business opportunity.<sup>134</sup> In 1948, the Liberian government entered into a profit-sharing agreement with Stettinius, and the Liberian registry was born.<sup>135</sup>

Taking all the above considerations into account, it is apparent that should any threat to these open registries be perceived, opposition will be strong. Luckily, there is a way to keep all parties happy while still ensuring that American cruise-goers are afforded more protection: UNCLOS should be amended to provide for a scheme whereby countries with a stake in an incident can formally extend their jurisdiction without treading on the toes of another sovereign power. If narrowly tailored, the grant of extension should not further complicate jurisdictional issues but set a “pecking order” that ensures that criminals are prosecuted. However, the United States is not a party to UNCLOS and is thus not able to propose any amendments.<sup>136</sup> So, unless a country party to UNCLOS proposes such an amendment, this solution is unlikely to come to fruition. It is important to mention that there is hope that such an amendment could be brought before UNCLOS. As cruise line statistics show, after the United States, most cruise ship passengers were Western European.<sup>137</sup> Germany, France, and the United Kingdom are all parties to UNCLOS. As the cruise industry grows, they may take interest in such an amendment to protect their nationals as well.<sup>138</sup>

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132. *Id.* at 158.

133. *Id.* at 159.

134. *Id.*

135. *Id.*

136. *Status of Treaties: United Nations Convention on the Law of the Sea*, U.N. TREATY COLLECTION, [https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg\\_no=XXI-6&chapter=21&Temp=mtdsg3&clang=\\_en](https://treaties.un.org/Pages/ViewDetailsIII.aspx?src=TREATY&mtdsg_no=XXI-6&chapter=21&Temp=mtdsg3&clang=_en) (last visited Feb. 21, 2021) [hereinafter *Countries Parties to UNCLOS*].

137. *See Number of Ocean Cruise Passengers Worldwide in 2019, by Region*, STATISTA, <https://www.statista.com/statistics/287111/cruise-passengers-by-source-country/> (last visited Feb. 21, 2021).

138. *See Countries Parties to UNCLOS, supra* note 136.

The amendment to UNCLOS would delineate a scheme under which countries could assert their jurisdiction over crimes occurring on the high seas if their nationals are involved and the flag state declines to extend its jurisdiction and prosecute the crime.

Where the ship is of one nationality, but the victim and aggressor are of different nationalities, the flag state is usually not particularly motivated to prosecute the aggressor. For example, in *United States v. Roberts*,<sup>139</sup> Roberts, a national of St. Vincent, was charged with sexual abuse of a minor on board the *M/V CELEBRATION* while it was in international waters.<sup>140</sup> The victim was a United States citizen.<sup>141</sup> In holding that the United States was authorized to exercise its jurisdiction, the court emphasized that Liberia, the flag state, “ha[d] little to no interest in the alleged offense because neither the victim nor the defendant are Liberian, the vessel does not operate in or around Liberian territory, and the vessel’s owners center their corporate operations in the United States.”<sup>142</sup> Thus, exercising United States jurisdiction would not intrude upon another sovereign’s interest.<sup>143</sup> Although the United States has not been shy to extend passive personality jurisdiction in this manner, explicit authorization by UNCLOS would go a long way in deterring crime and nudging cruise ships towards embracing more stringent safety standards. Thus, the amendment should provide that where a crime occurs on international waters and the flag state declines to prosecute the crime, the state of either the victim or the perpetrator may prosecute the crime if they wish.

Such an amendment could lead to issues when the aggressor and victim are from different countries. It is possible that the country of the aggressor would be interested in exerting nationality jurisdiction to prosecute its own national. A claim by the nation of the aggressor would be grounded in nationality jurisdiction, and a claim by the state of the victim would be grounded in passive personality jurisdiction. To resolve the claims between the two, it seems most fair to take into account protective jurisdiction to break the tie. By factoring in

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139. 1 F. Supp. 2d 601 (E.D. La. 1998).

140. *Id.* at 603.

141. *Id.*

142. *Id.* at 607.

143. *Id.*



protective jurisdiction as well, the amendment would effectively give jurisdiction to the nation that is most affected by the event. Often, this factor will weigh in favor of United States jurisdiction. As the court in *Roberts* recognized, cruise lines engage in substantial business in the United States and operate in United States territory. Most of their passengers are American citizens.

The above amendment to UNCLOS delineating when and where a state other than the flag state may assert its jurisdiction over events occurring on the high seas would keep flags of convenience intact while remedying the problems American victims of crime encounter on board cruise ships. This solution would encounter the least resistance and help provide immediate relief until flags of convenience can be eradicated as a practice completely.

#### *D. Common Suggestions and the Flaws Therein*

Some have argued that cruise ships need marshals to enforce public safety similar to airplanes. In 2008, California State Senator Joe Simitian introduced a bill that would require peace officers on board cruise ships sailing to and from California ports.<sup>144</sup> This solution was in part motivated by the concern that cruise line security does not adequately address passenger safety because there is an “inherent conflict of interest between the public relations goals of the employer and the public safety requirements of the passenger.”<sup>145</sup> The proposed peacekeepers would police public safety.<sup>146</sup> Eventually, the bill was killed on account of concerns that it would further muddy unclear jurisdictional waters.<sup>147</sup> Although the idea of having impartial officers on board sounds like the perfect fix, the unfortunate truth is that it would result in a jurisdictional mess. As mentioned earlier, coastal states have jurisdiction over all activities from baseline to twelve nautical miles off the coast. While that jurisdiction has a suggested limitation through UNCLOS, a coastal state has unlimited jurisdiction

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144. Kimi Yoshino, *Bill Would Boost Cruise Line Safety*, L.A. TIMES (Feb. 23, 2008, 12:00 AM), <https://www.latimes.com/archives/la-xpm-2008-feb-23-fi-cruiselaw23-story.html>.

145. *Id.*

146. *Id.*

147. Kimi Yoshino, *Cruise Safety Bill Is Killed*, L.A. TIMES (June 25, 2008, 12:00 AM), <http://www.latimes.com/business/la-fi-cruise25-2008jun25,0,512698.story>.

once a ship is in its port.<sup>148</sup> Should these guards violate the laws of the coastal state, they could be arrested. The guards could violate the law of the coastal state just by being armed. After all, this is the main reason why the fight against pirates has made extensive use of vessel-based armories. These ships loiter in international waters, acting as security guards for ships passing through dangerous waters and willing to pay for extra security.<sup>149</sup> Contracted guards will hop aboard a client's vessel with their weapons and ride through the "high risk" area.<sup>150</sup> Once the ship has passed back into safe waters, the guard will disembark to another armory.<sup>151</sup> The arrangement keeps the guns out at sea, avoiding inconsistent national laws as the ship sails through.<sup>152</sup> Moreover, even if the guards were not armed, they could still violate international law just by conducting an investigation. U.S. sea marshals would not have the authority to enforce U.S. law onboard the foreign flagged cruise ships.<sup>153</sup>

#### IV. CONCLUSION

Although the coronavirus pandemic temporarily shut down cruises in March of 2020, cruises have since returned in parts of the world. Cruises will resume in U.S. waters as well, as coronavirus has only dampened, not exhausted, the desire to vacation.

When ships are set to sail again, the problem with crime and jurisdiction will once again resurface. The major cruise lines will debut new ships, and the number of passengers expected to take a cruise per year is projected to continue to rise. More ships with more people mean more crime. Even if the crime rate onboard a Carnival cruise ship is lower than that of a city in the United States, the victims of crime aboard a cruise ship, unlike victims of crime on land, are often left with no recourse.

While it is imperative that the international community act, most passengers of a cruise ship are American citizens. Thus, even in the

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148. Wright, *supra* note 31, at 32 ("As in *Lotus*, the port state may exercise enforcement jurisdiction over a cruise ship when it docks in port.").

149. *Floating Armouries: The Ships Full of Guns for Hire Against Pirates*, PORT & TERMINAL (Nov. 16, 2019), <https://www.portandterminal.com/floating-armouries-the-ships-full-of-guns-for-hire-against-pirates/>.

150. *Id.*

151. *Id.*

152. *Id.*

153. Wright, *supra* note 31, at 38.

absence of international action, the United States should take action to protect its citizens. Amending the PVSA and Jones Act will sway cruise ships to reflag under the United States, lest they want to pay heavy fines or skip the American market completely. By registering under the United States, these ships will be “floating pieces” of the United States, and United States law will apply on the high seas. When American passengers are victims of crimes, they will be able to rest easy knowing that they can turn to the FBI easily.

Although most cruise ship passengers are American citizens, the problem is still an international one. Flags of convenience have had negative effects. While the international community should ideally aim at curbing the practice, due to the vehement opposition such a ban would encounter, it would be more feasible for the United States to amend the Jones Act and PVSA. By doing so, crime victims onboard cruise ships would have access to the justice they deserve, while flags of convenience would be dealt a blow. If cruise ships want access to American consumers, they should have to be subject to American laws. Slowly, the international community could then begin dismantling the practice.