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Smooth Sailing - Navigating the Sea of Law Applicable to the Cruise Line Industry

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SMOOTH SAILING? NAVIGATING THE SEA OF LAW APPLICABLE TO THE CRUISE LINE INDUSTRY

I. INTRODUCTION

When Merrian Carver disappeared from a cruise ship, the cruise line donated her belongings to charity, no one notified her family, and the crew generally acted as though nothing had gone wrong.1 When Annette Mizener vanished from a cruise ship, her family took the lead role in collecting evidence and securing the alleged crime scene before a ship security officer baselessly told them she committed suicide.2 In the heavily publicized George Smith case, crew members failed to enter his cabin when responding to a noise complaint, failed to secure or preserve the alleged crime scene, and failed to adequately assist his wife after he went missing from the ship under suspicious circumstances.3

1. See ABC News, Cruise Cover Up?, http://abcnews.go.com/Primetime/print?id=1541034 (Jan. 26, 2006) (reporting cabin attendant told his boss passenger was missing and boss did not order search). The cruise line did not readily cooperate with Ms. Carver’s family’s investigation, forcing the family to spend thousands of dollars on a private detective and a lawsuit. See id. (noting cruise line fired cabin attendant’s boss after internal hearing). The cruise line also established an anonymous hotline for employees that question the crew’s handling of a safety, security, or environmental issue. See International Maritime Security: Hearing Before the Joint Subcomms. on Government Reform, National Security, Emerging Threats and International Relations, Criminal Justice, Drug Policy, and Human Resources, 109th Cong. 71 (2005) [hereinafter Congressional Hearing I] (taking note of cruise line’s improved tracking system that shows whether every passenger in fact disembarked). The particular cruise line from which Ms. Carver disappeared has not successfully prosecuted any of the crimes committed on board its ships over the past thirty-five years. See Statements Submitted for the Record: International Maritime Security Hearing, http://reform.house.gov/UploadedFiles/Statements%20for%20Record.pdf (Aug. 1, 2005) (quoting maritime attorney’s statement attached to Carver family statement).

2. See ABC News, Cruise Vanishing: Suicide or Foul Play?, Jan. 26, 2006, http://abcnews.go.com/Primetime/print?id=1542501 (noting cruise line also stated it would not continue to look for her “[b]ecause usually the body . . . sinks before it floats”). Cruise passengers commonly report their travel companions missing, but those “missing” passengers are almost always later found on board. See id. (explaining cruise line’s procedures).

3. See Alison Leigh Cowan, Bride Recounts Disappearance of Husband During Cruise, N.Y. TIMES, Jan. 5, 2006, at B1 (revealing cruise line washed away blood after receiving permission to do so from Turkish officials in port of call). The cruise line vigorously challenges and defends itself against many of the accusations made regarding the Smith case. See, e.g., ABC News, Two Sides of the Honeymoon Cruise Disappearance, Jan. 26, 2006, http://abcnews.go.com/Primetime/print?id=1546815 (reporting captain’s assertions that crew secured scene and contacted authorities, and Turkish police conducted “full forensic investigation” and turned evidence over to FBI). The facts of the Smith case, if proven true, are egregious: the cruise line initially did not allow Mrs. Smith to call anyone; told her she had to leave the

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“Watching the news, you’d think cruise-ship passengers getting lost at sea was an epidemic . . . .” The recent string of highly publicized disappearances on the open seas prompted relatives of missing cruise passengers to form a group seeking industry reform by Congress. Consequently, in December 2005, Congress held an introductory hearing on international maritime security, focusing for the first time more on passenger safety rather than on the threat of terrorism.

A major problem Congress faces when addressing cruise line industry safety is that valid safety issues may not exist. The only ship with Turkish police; promised her cruise ship security officer escorts and failed to provide them; and left her in Turkey with no money, belongings, or plane ticket home. See Congressional Hearing I, supra note 1, at 40 (describing Mrs. Smith’s statement submitted for hearing’s record and further noting cruise line showed no compassion, considering twenty-five-year-old newlywed lost her new husband). In addition, she later allegedly suffered a sexual assault by Turkish police. See id. Though these allegations have not yet been proven, one Congressman indicated they may be more likely to be true than not, because Mrs. Smith could have released her statement and allegations publicly much earlier than she did. See id. at 41 (noting Congressman’s assertion that if she had released information sooner, cruise line might no longer get any business).


6. See Congressional Hearing I, supra note 1, at 1, 9 (stating U.S. Representative Christopher Shays (R-CT) chaired hearing and mentioning heavy focus on terrorism until this hearing). Representative Shays called for the hearing after one of his constituents experienced events similar to those of the Carver family’s. See Cruise Cover Up?, supra note 1 (“Merrian Carver’s case just ignites me because I think of the arrogance of the industry . . . . In the end, they acted like she was a nonperson.” (quoting Representative Shays)). Representative Shays analogized the cruise industry to Las Vegas by noting that what happens on board tends to stay on board. See Congressional Hearing I, supra note 1, at 66 (referencing infamous Las Vegas advertising slogan). The second in the series of hearings took place on March 7, 2006. See International Maritime Security II: Law Enforcement, Passenger Security and Incident Investigation on Cruise Ships: Hearing Before the Committee on Government Reform and Subcommittee on National Security, Emerging Threats and International Relations, 109th Cong. 218 (2006) (hereinafter Congressional Hearing II) (declaring further hearings to follow). For a further discussion detailing the second Congressional hearing, see infra notes 124-29 and accompanying text.

7. See Congressional Hearing I, supra note 1, at 28 (noting absence of legal requirement that cruise lines report crimes occurring on board ship to any U.S.
statistics available, which may not provide a completely accurate picture of the true crime rate aboard cruises, are those the industry voluntarily reports to the FBI.\textsuperscript{8} Cruise industry officials estimate that thirteen people have vanished from cruise ships over the last two years, and the officials report approximately fifty cruise ship crimes per year to the FBI.\textsuperscript{9} Other sources, however, report higher numbers.\textsuperscript{10} Despite the discrepancy among the numbers, the cruise industry claims passengers are safer aboard cruise ships than in almost any American town.\textsuperscript{11} The cruise industry further main-

agency). Additionally, 2,000 people go missing each day in the U.S., as compared to the thirteen who have reportedly gone missing at sea over the last two years. See \textit{id.} at 8 (mentioning that it may be safer to take cruise than to “walk down the street in any city in America”). This statistic slightly misleads the reader, however, because when people go missing in the U.S., a crime or serious accident is not necessarily involved because people can later be located anywhere; whereas on a cruise ship, there is nowhere else to go, and thus a crime or serious accident is necessarily implicated. See \textit{id.} at 39 (posing reasons why someone went missing from cruise ship include murder, serious accident, or suicide). Cruise lines are well aware that passengers often drink too much and are not overly concerned with their own personal safety, which is why ships are carefully designed to protect passenger safety. See \textit{id.} at 72, 73 (noting high ship rails prevent accidental falls, empty swimming pools are covered, and cruise personnel will escort intoxicated passengers back to their cabins).

\textit{8.} See \textit{id.} at 26 (quoting FBI official’s statement: “We don’t know what they haven’t reported to us. There is no way of knowing.”). For example, there are no available statistics on thefts aboard cruise ships. See \textit{id.} at 28. “[Y]ou are depending on the good will of the industry to provide you accurate information.” \textit{Id.} at 38 (quoting Representative Shays and acknowledging it may not be in best interest of cruise line industry to report crime statistics fully and accurately). \textit{But see Congressional Hearing II, supra note 6, at 224 (quoting testimony of Captain William Wright, senior vice president of Marine Operations for Royal Caribbean International). Captain Wright asserts:}

\begin{quote}
Our policies and training require diligent reporting of alleged crimes to the FBI and other law enforcement authorities. The FBI has identified for the cruise line industry those allegations of potential crimes it wants reported. We not only report what the FBI requests, but we often report additional allegations that fall below FBI thresholds or what otherwise would not be reported in a landbased environment.
\end{quote}

\textit{Id.}

\textit{9.} See Christoffersen, \textit{supra} note 5 (reporting, however, that FBI opened 305 high seas criminal cases over past five years, averaging sixty-one per year). Cruise personnel find bodies in less than twenty-five percent of the missing person cases, though most of the reported deaths are on commercial cargo vessels, rather than cruise ships. See \textit{Congressional Hearing I, supra note 1, at 12} (noting commercial cargo ships are increasingly subject to pirate attacks motivated by theft). Although there were nearly 4,000 pirate attacks on commercial ships in 2005, there was only one known attack on a cruise ship, which crewmembers thwarted. See \textit{id.} at 48 (stating cruise ships can immediately alert authorities if subject to pirate incident).

\textit{10.} See \textit{15 Passengers Vanish Since 2004, Miami Herald,} Feb. 12, 2006, at E4 (describing fifteen missing passenger cases since 2004 and noting “details are scarce”).

\textit{11.} See Christoffersen, \textit{supra} note 5 (citing accusations that cruise industry may be covering up foul play to avoid bad publicity in effort to keep its business
tains that cruising is the safest way to travel, that it does not ignore or avoid problems aboard ships, and that it takes every reported incident seriously by following established protocols. Nevertheless, both victims of these crimes and their families often feel that justice is not delivered by either the industry’s handling of these incidents or by the insufficient legal remedies available.

Much to victims’ and their families’ dismay, there may be very little the U.S. government can do to address their problems. Cruise line corporations and their ships are not traditionally American-owned or registered; thus, regulating their affairs domestically may involve U.S. encroachment upon the sovereignty of countries where the cruise lines are based or where the incidents occur. The U.S.’s regulation of its own passenger boat industry, however, is thriving. Importantly, the FBI is not aware of any systemic failure of the cruise industry to report crimes at sea. See Congressional Hearing I, supra note 1, at 22 (recognizing U.S. Navy does not maintain statistics on number of acts of piracy at sea per year).


13. See Christoffersen, supra note 5 (opining failure to see justice done “adds insult to injury” (quoting George Smith’s sister)). Critics say that it is not about how often people go missing, but how the cruise lines handle the situation when it happens.” Cruise Line Industry Responds to Critics, supra note 12 (reporting complaints center on cruise officials’ failure to respond quickly to incident reports, failure to take such reports seriously, and failure to stop boat and search for missing person). “All they had to do [was] acknowledge the crime was committed. They couldn’t probably solve the crime. You had a right to expect them to make a good faith effort.” Congressional Hearing II, supra note 6, at 135-36 (quoting Representative Shays, who directed his comments to Ira Leonard, passenger who experienced sizeable theft while on board cruise ship). Representative Shays asserted that had the cruise line treated Mr. Leonard with respect rather than adding to his misery, it may have won him back as a customer. See id. For a further discussion detailing the cruise industry’s current procedures to respond to criminal incidents and missing person reports, see infra notes 104-05 and accompanying text. For a further discussion detailing the lack of legal remedies available domestically, see infra notes 79-89 and accompanying text.

14. For a further discussion of the lack of available American remedies, see infra notes 79-89 and accompanying text.

15. See Congressional Hearing I, supra note 1, at 7 (“Once we get into the complicated conflict of laws area, have mercy on us.” (quoting Congresswoman Norton)). For example, in the Smith case, the cruise line contacted the FBI because an American citizen was the victim, Turkish authorities because the ship docked in Turkey after the alleged crime, Greek authorities because the crime may have occurred in Greece’s waters, and Bahamian authorities because the ship is registered in the Bahamas. See id. at 58-59 (noting response to each incident is determined on case by case basis). For a further discussion on the applicability of U.S. law to cruise ships, see infra notes 74-93 and accompanying text.
The U.S. acknowledges that it focuses its security efforts on terrorism and weapons of mass destruction at domestic ports, rather than on general passenger safety and common crimes, such as theft and assault. Ultimately, American cruise passengers simply should not expect either protection by U.S. law wherever they travel or protection by law enforcement at all, much less in a timely manner. “Even when the law is clear, the effective reach of U.S. authority depends on the willingness and ability of cruise ship operators to make security a visible priority, recognize and report incidents, preserve evidence, and conduct thorough on board investigations.”

This Comment intends to provide a familiarity with the cruise industry’s origins and the development of its governing law as a use-

16. See Timothy Egan, In Indicting Boat’s Captain, U.S. Tries to Send a Message, N.Y. TIMES, Feb. 6, 2006, at A14 (describing rarely used 154-year-old statute meant to hold boat captains liable for unsafe operation of their boats when passenger death results). “When captains operate their boats unsafely and people are killed, they must be held accountable.” Id. (quoting federal prosecutor’s announcement of charges in case against allegedly negligent small boat captain). Over the last century, the law has not been utilized more than a dozen times, even though there have been countless deaths at sea, many due to the negligence of captains. See id. (describing boating accidents and areas of U.S. waters known as dangerous). Holding a domestic small boat captain liable for passenger deaths may indicate that the U.S. would like to prosecute these incidents more vigorously, whether they happen at home or abroad. See id. (noting federal authorities are sending message to thousands of boat operators that they can be punished for negligence resulting in death at sea). For a further discussion of the U.S.’s reputation within the international cruise industry, see infra note 78 and accompanying text.

17. See Congressional Hearing I, supra note 1, at 9, 46 (mentioning U.S. has 539 ports and that cruise lines use many more ports globally). The FBI and the Coast Guard are jointly responsible for the U.S.’s maritime jurisdiction. See id. at 10 (commending International Council of Cruise Ship Lines for maintaining high safety standards within industry). For a further discussion on the International Council of Cruise Ship Lines, see infra notes 94-106 and accompanying text.

18. See id. at 3, 54 (quoting congressional representative’s assertion that most people assume there is uniform standard of law that applies to cruise ships despite fact that passengers know cruise ships visit other countries); see also Dr. R. Nicholas Palarino & Pat DeQuattro, Staff of S. Comms. on National Security, Emerging Threats and International Relations, and Criminal Justice, Drug Policy and Human Resources, 109th Cong., Briefing Memorandum for Hearing on International Maritime Security at 10-12, Dec. 8, 2005, available at http://reform.house.gov/UploadedFiles/Memo%20MARITIME.pdf [hereinafter Briefing Memorandum] (“American passengers . . . should be aware that the U.S. government may not be able to come to their assistance in a timely manner. . . . [R]eporting a crime on board . . . does not mean anything will be done or that a crime will be investigated. Passengers should be made aware of these issues.”).

19. Congressional Hearing II, supra note 6, at 1, 2 (quoting Representative Shays). “Even attorneys find it difficult to navigate the complex jurisdictional boundaries, statutory definitions, treaty provisions, maritime traditions, and fine-print liability disclaimers.” Id. (quoting Representative Shays). For a further discussion of the law and regulations governing the cruise industry, see infra notes 42-106 and accompanying text.
ful starting point in understanding the current controlling law. Section II provides a brief history of the cruise industry. Section III offers an overview of the law applicable to the industry. Section IV details the recent Congressional hearings regarding cruise lines. Additionally, this Comment offers possible courses of action the U.S. government could take to expand its influence over the industry and to help ensure the safety of American passengers. Finally, Section V summarizes this Comment.

II. A BRIEF HISTORY OF THE CRUISE LINE INDUSTRY

Cargo ships offered the first passenger voyages, simultaneously catering to passengers’ comfort while transporting goods. By the 1830s, English companies, making luxurious steamships the norm, led the fledgling cruise industry. The year 1844 is considered the true beginning of the pleasure cruise industry, and throughout the 1850s and 1860s, companies began to make ships more luxurious and to focus solely on passengers’ comfort and enjoyment. By the early 1900s, Germany led the industry by developing superliners comparable to “massive and ornate floating hotels.” The pinnacle

20. For a further discussion of the cruise industry’s development and its applicable law and regulations, see infra notes 26-106 and accompanying text.
21. For a further discussion providing the cruise industry’s history, see infra notes 26-41 and accompanying text.
22. For a further discussion tracing the law and regulations that govern the cruise industry, see infra notes 42-106 and accompanying text.
23. For an overview of the December 2005 congressional hearing on international maritime security, see infra notes 116-23 and accompanying text. For an overview of the March 2006 congressional hearing on international maritime security, see infra notes 124-29 and accompanying text.
24. For a further discussion providing possible measures the U.S. could take to more fully protect American passengers at sea, see infra notes 132-83 and accompanying text.
25. For a further discussion summarizing the main points of this Comment, see infra notes 184-98 and accompanying text.
27. See, e.g., id. (describing one ship that left Liverpool and supplied passengers with fresh milk from cow on board).
28. See id. (emphasizing “dramatic improvement in the quality of the voyage for passengers” through implementation of electric lights, increased deck space, and entertainment).
29. Id. (portraying elegance of new superliners that minimized discomfort associated with ocean travel, offered planned activities, and began tradition of dressing formally for dinner).
of the industry's early history was without a doubt the well-documented Titanic disaster in 1912.30

After that, World Wars I and II both interrupted the manufacture of new ships, while countries used existing ships to transport troops.31 The majority of today's cruise lines and ships are not American-owned, perhaps because the U.S. halted transatlantic cruises during World War II, which allowed European lines to take control.32 After the war, the U.S. government re-entered the industry by subsidizing cruise ship building.33 Nevertheless, by 1958, cruise lines found themselves bankrupt because airlines took control of the travel industry.34

The modern cruise industry emerged in the 1960s as the focus shifted from traveling for the purpose of reaching a destination to simply enjoying the voyage itself.35 "The ship [became] the destination."36 Cruise lines, diverging from the industry's earlier affluence and glamour, began to market more affordable vacation cruises with a "fun ship" image.37 Today, the entertainment available on board cruise ships ranges from gambling to karaoke to art auc-

30. See generally Geoff Tibballs, The Titanic: The Extraordinary Story of the "Unsinkable" Ship (Carlton Books Ltd. 1997) (recounting entire Titanic odyssey). Over 3,000 books exist about the Titanic. See id. at 7 (elaborating upon strength of Titanic story and legend); see also Titanic Sinks Four Hours After Hitting Iceberg; 866 Rescued by Carpathia, Probably 1250 Perish; Ismay Safe, Mrs. Astor Maybe, Noted Names Missing, N.Y. TIMES, Apr. 16, 1912, at A1 (reporting Titanic's sinking and providing partial list of those saved).

31. See Boyd, supra note 26 (observing years between two World Wars were most fashionable and glamorous for cruise lines, catering mostly to rich and famous).

32. See id. (remarking that European lines carried war refugees from Europe and business travelers and tourists to Europe during wars). For a further discussion detailing the current cruise industry and the relatively minor U.S. participation, see infra note 44 and accompanying text.

33. See id. (citing lack of American-owned cruise ships and resulting loss of profits from industry as justification for subsidization).

34. See id. (explaining that transatlantic business for cruise lines declined as non-stop flights to Europe took over).

35. See id. (referring to rise of Caribbean vacations, more casual atmosphere on board ships, and increased affordability of voyages).


Cruise lines engage in an ongoing battle to outdo each other with bigger, more luxurious, and more entertaining ships with each new addition to their fleets. Cruise ship owners create a concept and then set out to sell it. The number of passengers departing from U.S. ports increased four and a half percent in the first nine months of 2005 compared to that same period in 2004, confirming the ever-growing popularity of cruises.

III. LAW GOVERNING THE CRUISE INDUSTRY

International law and self-regulation largely govern the cruise industry. There is little U.S. law directed toward the cruise industry. This is perhaps surprising, given how much business cruise


40. Larger Ships, supra note 36 (illustrating how cruise ships differ from cargo ships because cargo ships are built in response to market needs whereas cruise ships are built to create market demand).


42. See generally International Maritime Organization, Introduction to IMO, http://www.imo.org/About/mainframe.asp?topic_id=3 (last visited Sept. 17, 2006) (providing overview of International Maritime Organization's history and purposes and explaining United Nations established it through convention). For a further discussion setting forth the relevant international law, see infra notes 49-73 and accompanying text. For a further discussion describing the industry's internal regulation, see infra notes 94-106 and accompanying text.

43. For a further discussion detailing the minimal U.S. law applicable to the cruise industry and the problems this has created for some American cruise passengers, see infra notes 74-93 and accompanying text.
lines conduct involving Americans. Section A reviews the relevant international maritime law. Section B examines the relevant domestic law applicable to ships at sea. Section B also explores the apparent lack of domestic legal remedies available for either victims or their families. Finally, and perhaps most importantly, Section C sets forth the cruise industry's own internal standards and regulations.

A. International Maritime Law

International maritime law applies to the cruise industry because cruise ships sail in the waters of many countries, as well as in the waters of no country, otherwise known as the high seas. The United Nations's International Maritime Organization ("IMO") monitors and regulates international commercial and passenger shipping. The IMO's primary purpose is "to provide machinery for cooperation among Governments in the field of governmental regulation and practices relating to technical matters of all kinds affecting shipping engaged in international trade [and to] encourage and facilitate the general adoption of the highest practica-
ble standards in matters concerning maritime safety . . . .". Its slogan is “[s]afe, secure and efficient shipping on clean oceans.”

To achieve its objectives, the IMO initiated over forty international conventions, protocols, agreements, and amendments, and it now focuses on updating them as the need for new conventions slows.

Adopting international treaties is worthless unless the signatory governments effectuate them. The IMO adopts legislation that individual signatory governments must implement. For example, the United Nations Convention on the Law of the Sea ("Convention") replaced the Freedom of the Seas Doctrine, which had limited a country's control of the ocean to the area immediately surrounding its coastline. The Freedom of the Seas Doctrine, stemming from the 1600s, eventually resulted in nations dividing the oceans and competing fiercely for their vast resources, as well as for control of the oceans themselves; in short, before the Convention, tension over ocean ownership created a setting constantly ripe for war. The Convention is virtually all-encompassing, including provisions on naval power, maritime commerce, interests of countries with coastal land, marine environment protection, research, and international dispute settlement.

51. United Nations Convention on the International Maritime Organization, Mar. 17, 1958, 9 U.S.T. 621, Art. 1(a) [hereinafter Convention]; see also Introduction to IMO, supra note 42 (stating secondary purpose is to prevent and control pollution from ships).


54. See Introduction to IMO, supra note 42 (remarking that process of effecting treaties is different in each country, but IMO has power to monitor governments' actions).

55. See Frequently Asked Questions, supra note 52 (noting IMO does not implement legislation because member governments are responsible for making conventions part of their national law and enforcing them).


57. See id. ("The oceans were generating a multitude of claims, counterclaims and sovereignty disputes.").

58. See id. (listing and describing key provisions of Convention: setting limits, navigation, exclusive economic zone, continental shelf, deep seabed mining, exploitation regime, technological prospects, universal participation in Convention, pioneer investors, protecting marine environment, marine scientific research, and settlement of disputes).
because signatory countries must accept it as a whole, including the provision governing dispute settlement. Normally, the protocol governing dispute settlement under a particular treaty is a separate agreement that signatories can choose to accept or decline.

Under the Convention, coastal states may enforce any domestic law within twelve nautical miles of their shoreline and any police powers within twenty-four nautical miles. The IMO requires all ships engaged in international trade to have a country of registry in order to sail in international waters. A ship is considered the territory of the country in which it is registered, but other countries may assert jurisdiction over the ship as well depending on the circumstances.

Notably, the U.S. is not a party to the Convention. The U.S. chose not to become a member primarily because it disagreed with

59. *See id.* (noting Convention is "unprecedented attempt by the international community to regulate all aspects of the resources of the sea and uses of the ocean, and thus bring a stable order to [human]kind's very source of life"). Some of the more important provisions of the treaty govern navigational rights, territorial sea limits, economic jurisdiction, legal status of resources on the seabed beyond the limits of national jurisdiction, passage of ships through narrow straits, conservation and management of living marine resources, protection of the marine environment, a marine research regime and a binding procedure for settlement of disputes between countries.

60. *See id.* (describing Convention's dispute settlement provision and emphasizing novel approach of combining direct negotiations between countries involved with resort to third party dispute settlement only if necessary).

61. *See Convention: Historical Perspective, supra* note 56 (explaining Convention only creates rights for signatory countries who also must accept obligations under Convention, with exception of those rights considered customary international law).

62. *See ICCL, International Maritime Industry: Background and Facts, http://www.iccl.org/faq/imi.cfm* (last visited Sept. 17, 2006) [hereinafter Background and Facts] ("[M]ost countries, including the U.S., provide these registration services or flags of registry."). A "flag state" is a country where the ship is registered; it must be a member of the IMO, adopt all of the IMO's Conventions and Resolutions regarding maritime safety, and have "an established maritime organization that is capable of enforcing all international and national regulations." *Id.* (mentioning most flag registries monitor compliance with international and national standards and require annual ship inspections).

63. *See Congressional Hearing I, supra* note 1, at 73 (observing, for example, place of ticket sale may impact rights and responsibilities of ship and passengers, in addition to other factors). For a further discussion of the factors affecting jurisdiction over a ship, see *infra* notes 66 and 134 and accompanying text.

the provisions of the Convention regarding deep seabed mining. Because it did not sign the Convention, the U.S. must utilize customary international law, rather than treaty law, when asserting its jurisdiction beyond its territorial waters. The U.S. relies on five general principles under which a country may assert extraterritorial jurisdiction: (1) objective territorial, (2) nationality, (3) protective, (4) passive personality, and (5) universality.

One international convention the U.S. did sign is the International Convention for Safety of Life at Sea ("SOLAS Convention"). This convention was developed in 1914 in response to the Titanic tragedy, with the most recent version adopted in 1974 and amended in 2006. The SOLAS Convention covers on-board fire safety, ship construction, life-saving equipment, radio communications, reform.house.gov/UploadedFiles/MARIT000.pdf (summarizing various criticisms of Convention).


66. See Congressional Hearing I, supra note 1, at 4 (quoting Chris Swecker, Assistant Director, Federal Bureau of Investigation) (summarizing principles under which U.S. may assert extraterritorial jurisdiction). Along with his testimony, Mr. Swecker also submitted a useful table summarizing the primary circumstances under which the FBI will investigate an alleged crime that occurred beyond the U.S. territorial waters. See id. at 10 (explaining which country has jurisdiction under given set of facts). The table has been reproduced herein as Appendix A.

67. See id. at 4 (elaborating upon customary international maritime law). In preparation for a hearing, Mr. Swecker answered the following question posed by the Congressional subcommittees: "What international and national laws pertain to security of Americans onboard ships traveling outside U.S. territorial waters?"

1) the objective territorial principle – where the offense occurs in one country but has effects on another (for example, killing someone by shooting across an international border);
2) the nationality principle – where the offender is a citizen of the prosecuting [nation];
3) the protective principle – where the offense threatens the vital interests of the prosecuting [nation] (for example, acts of terror);
4) the passive personality principle – where the victim is a citizen of the prosecuting [nation]; and
5) the universality principle – where the offense is universally condemned by the international community, sometimes in a multinational convention or treaty to which the United States is a signatory (piracy would be one such example).

Id. at 2, 4.

68. See International Maritime Organization FAQ, supra note 44 (noting Congress ratified SOLAS Convention and implemented its requirements).

tion, navigation safety, cargo, dangerous goods, nuclear ships, and maritime safety and security.\textsuperscript{70} Chapter XI-1 of the SOLAS Convention contains a provision requiring ships to maintain an on-board record denoting the ship's flag state, the owner's state, and other pertinent information making it easier to quickly determine which country's or countries' laws apply to the ship.\textsuperscript{71} Chapter XI-2 of the SOLAS Convention, which addresses port security, is particularly relevant to passengers' personal safety.\textsuperscript{72} It also grants the ship's captain sole discretion in maintaining the ship's security when necessary and governs the delay, detention, or expulsion of a ship from port.\textsuperscript{73}

B. Domestic Maritime Law

The U.S. claims jurisdiction over certain matters normally controlled by individual states, specifically regarding crimes occurring within U.S.-governed waters.\textsuperscript{74} In the United States Criminal Code section entitled Special Maritime and Territorial Jurisdiction of the United States, the U.S. also assumes jurisdiction over crimes by or against its citizens occurring anywhere not under the jurisdiction of another country.\textsuperscript{75} The U.S. further assumes jurisdiction, to the extent permitted by international law, over crimes committed by or against its citizens aboard ships with a scheduled arrival or departure from within its territory.\textsuperscript{76} The U.S. Supreme Court affirmed the principles set forth in this section of the Code.\textsuperscript{77} The cruise industry recognizes the U.S. for its strict compliance with and enforcement of maritime law.

\textsuperscript{70} See IMO SOLAS, supra note 69 (noting SOLAS Convention also covers management for safe operation of ships, safety measures for high-speed crafts, and additional safety measures for bulk carriers).

\textsuperscript{71} See IMO Adopts Comprehensive Maritime Security Measures, supra note 69 (stating record would contain ship's history and must be kept current).

\textsuperscript{72} See id. (explaining provision would apply to passenger ships).

\textsuperscript{73} See IMO SOLAS, supra note 69 (mentioning Chapter XI-2 also covers ship companies' specific responsibility).

\textsuperscript{74} See Special Maritime and Territorial Jurisdiction of the United States, 18 U.S.C.A. § 7 (2001) (setting forth special circumstances under which U.S.'s jurisdiction may supersede individual states').

\textsuperscript{75} See id. § 7(7) ("Any place outside the jurisdiction of any nation with respect to an offense by or against a national of the United States.").

\textsuperscript{76} See id. § 7(8). The law specifically states that it does not trump any conflicting international treaty. See 18 U.S.C.A. § 7 (West Supp. 2006).

\textsuperscript{77} See United States v. Flores, 289 U.S. 137, 159 (1933) ("In the absence of any controlling treaty provision, and any assertion of jurisdiction by the territorial sovereign, it is the duty of the . . . United States to apply to offenses committed by its citizens on [its] vessels . . . . its own statutes, interpreted in the light of recognized principles of international law.").
forcement of the industry's regulatory standards, perhaps in light of the ever-present threat of terrorism.\textsuperscript{78}

Adding to the troubles of victims and their families is their frequent inability to sue cruise lines in the U.S. court of their choice.\textsuperscript{79} When cruise passengers purchase a ticket, they may not realize that they are automatically agreeing to the cruise line's forum selection clause and often to a limited timeframe in which to bring suit.\textsuperscript{80} Contracts such as these, offered by a party with stronger bargaining power to a weaker party with no opportunity to negotiate the terms, are called adhesion contracts.\textsuperscript{81} U.S. courts uphold forum selection clauses if: (1) they are reasonable; (2) the contract is not fraudulently induced; and (3) the passenger is given the opportunity to reject the contract.\textsuperscript{82} Courts, however, will not uphold clauses limiting the cruise line's liability for negligence or infliction of emotional distress if the cruise line's negligence caused the injury.\textsuperscript{83}

\textsuperscript{78}. See Background and Facts, supra note 62 (noting U.S. Coast Guard's quarterly inspection of all ships picking up passengers in U.S. ports, and that U.S.'s strict standards are why majority of U.S.-controlled shipping companies choose to register under other countries' flags). "As new threats against American citizens and American interests emerge in the post-September 11th era, we ask how effectively [current maritime law] protects the lives, rights, and property of those traveling in international waters." Congressional Hearing II, supra note 6, at 1 (quoting Representative Shays). But see Egan, supra note 16 (describing U.S.'s history of lenient regulation of small domestic passenger boats). For a further discussion proposing that the U.S. focuses on terrorism rather than general passenger safety, see supra note 6 and accompanying text.


\textsuperscript{80}. See Kim Jefferies, Personal Jurisdiction and Contractual Forum Selection in Maritime Personal Injury Cases, 7 U.S.F. Mar. L.J. 139, 147 (1994) (stating forum selection clauses and shortened time periods within which to bring suit are "common ticket clauses").

\textsuperscript{81}. See Carnival Cruise Lines, 499 U.S. at 597, 600 (Stevens, J., dissenting) (questioning validity of adhesion contracts because weaker party may not necessarily consent to terms knowingly and voluntarily).

\textsuperscript{82}. See id. at 595 ("[F]orum selection clauses . . . are subject to judicial scrutiny for fundamental fairness.").

\textsuperscript{83}. See Limitation of Vessel Owner's Liability, 46 U.S.C.A. app. § 183c (1996) (stating such clauses violate public policy and thus are null and void).
Unfortunately for passengers, the Supreme Court upheld a forum selection clause requiring plaintiffs to litigate on the other side of the country, regardless of whether it was practical for the particular plaintiff(s) involved.84

If the plaintiff still decides to sue the cruise line, the Death on the High Seas by Wrongful Act is one federal statute that may provide relief.85 This Act allows the decedent’s representative to bring suit against the responsible ship, person, or corporation for the benefit of the decedent’s immediate family and dependent relatives.86 Under the Act, plaintiffs may recover actual damages caused by the death and possibly punitive damages.87 Importantly, any contributory negligence on the decedent’s part may limit the available recovery.88 Also, the decedent’s family must bring suit within three years of the date when the cause of action accrued.89

The following are some basic legal principles U.S. courts apply in cases involving cruise ships. First, federal maritime law governs, interprets, and enforces cruise tickets because they are considered maritime contracts.90 Second, a court might not enforce a choice of law provision selecting a foreign country’s law as the law governing a dispute under an adhesion contract; this is especially true when there are significant contacts with the U.S. entitling the court to apply U.S. law to apply U.S. law.91 Third, a ship owner has a duty to all lawful passengers and their guests to provide reasonable protection from

84. See Carnival Cruise Lines, 499 U.S. at 587-88, 596-97 (upholding forum selection clause designating Florida even though plaintiffs lived in Washington state and despite defendant cruise line arguably having sufficient contacts with Washington to support its personal jurisdiction over cruise line).


86. See id. § 761(a) (setting forth federal right of action for death at sea). This particular section applies when the victim’s death occurred beyond the U.S.’s territorial waters and was caused by an intentional tort or negligence. See id. (defining U.S.’s territorial waters as one “marine league” beyond shoreline).

87. See id. § 762(a)-(b) (barring punitive damages for aviation accidents at sea, but otherwise silent on punitive damages for wrongful death by other means).


89. See 46 U.S.C. app. § 763a (instructing that limitation applies unless law specifies otherwise). For a further discussion on how cruise lines shorten the statute of limitations in order to reduce the number of suits brought against them, see supra notes 79-81 and accompanying text.

90. See, e.g., Wallis v. Princess Cruises, Inc., 306 F.3d 827, 834 (9th Cir. 2002) (affirming federal law preemption of state law).

91. See, e.g., Mulvihill v. Furness, Withy & Co., 136 F. Supp. 201, 205-06 (S.D.N.Y. 1955) (“[I]t may not be assumed that the parties’ choice of law will automatically foreclose this Court from applying another law . . . .”).
danger. Finally, unfortunately for many of the victims' families, the mere fact that an accident occurred, without more, is insufficient to sustain a negligence claim against a ship's owner.

C. Cruise Line Industry Self-Regulation

All of the major cruise lines are members of the International Council of Cruise Lines ("ICCL"), a trade group representing the industry's positions and interests to various lawmakers, policymakers, and industry partners. The ICCL, a non-governmental organization, actively participates in the IMO's decision-making process. The organization asserts that cruise ships are "comparable to a secure building with a 24 hour security guard." Cruise lines, in order to both that they generate accurate records of who is on board and that only authorized persons gain access to the ship, issue all passengers and crewmembers identification cards that

92. See Kermarec v. Compagnie Generale Transatlantique, 358 U.S. 625, 630 (1959) (citing Leathers v. Blessing, 105 U.S. 626 (1881)) ("It is a settled principle of maritime law that a shipowner owes the duty of exercising reasonable care towards those lawfully aboard the vessel who are not members of the crew.").


95. See Who We Are, supra note 94 (listing conventions ICCL helped develop and promote).

96. The Safest Way to Travel: Cruise Ship Security, http://www.iccl.org/press-room/securityfinal.pdf [hereinafter The Safest Way to Travel] (last visited Sept. 16, 2006) (marking official registry of passengers and crewmembers strictly controls access to ship). Passengers and crewmembers may only leave or board the cruise ship after passing through strict security. See id. (describing use of photo identification and screening of passengers, crewmembers, and baggage). Further, cruise lines screen crewmembers prior to employment, and the U.S. embassy conducts background checks before granting work visas to non-American employees. See id. (pointing out that many cruise lines' heightened security procedures were in place before September 11, 2001 attacks against U.S.). But see Congressional Hearing II, supra note 6, at 149 (quoting testimony of Brett Rivkind, maritime attorney, and stating crewmembers secretly pay off cruise line agents in different countries to gain employment without conducting or passing background check).
they must present upon leaving or boarding the ship.\textsuperscript{97} Many cruise lines prohibit passengers from receiving visitors on board altogether.\textsuperscript{98} Additionally, cruise ships and ports have formal security plans that the U.S. Coast Guard must approve.\textsuperscript{99}

In 1999, the ICCL adopted a zero tolerance industry standard against crimes committed aboard cruise ships.\textsuperscript{100} The ICCL's security committee consists of its member cruise lines' security directors and meets bimonthly with U.S. law enforcement and intelligence agencies to discuss security.\textsuperscript{101} Each ICCL member cruise ship has a team of security personnel headed by a lead security officer, many of whom have military or law enforcement backgrounds.\textsuperscript{102} The U.S. Coast Guard approved the ICCL's protocols that allow ships to quickly increase their security measures when necessary.\textsuperscript{103} When a crime may have occurred aboard a ship, the current policy requires the crew to secure the scene, preserve evidence, and contact law enforcement authorities.\textsuperscript{104} Specifically, in missing person cases, the policy is to page the person, search the ship if neither the person nor a passenger with knowledge of the person's whereabouts responds to the page, and finally notify the U.S. Coast Guard if the

\textsuperscript{97} See, e.g., \textit{Congressional Hearing II}, supra note 6, at 239 (quoting testimony of Captain William Wright, senior vice president of Marine Operations for Royal Caribbean International, describing Royal Caribbean's 'SeaPass' system as example of security measure beyond what law requires).


\textsuperscript{99} See \textit{The Safest Way to Travel}, supra note 96 (describing U.S. port security as comparable to that of airports').


\textsuperscript{101} See \textit{Congressional Hearing I}, supra note 1, at 46 (noting meetings held consistently for last ten years).

\textsuperscript{102} See \textit{id.} (informing committees that security personnel are trained in maritime security and crime scene preservation basics).

\textsuperscript{103} See \textit{id.} at 47-49 (describing how security personnel maintain security on board ships twenty-four hours per day and are aided by surveillance cameras).

\textsuperscript{104} See \textit{id.} at 56-57 (asserting that cruise line followed protocol in dealing with Smith case). For further discussion of the Smith case, see supra notes 3, 15 and \textit{infra} notes 133, 138 and accompanying text.
person is still missing. Also, ships generally have a makeshift jail on board.

IV. FUTURE DIRECTION OF U.S. MARITIME LAW

The law applicable to cruise lines can be strengthened. In fact, Congress held hearings in December 2005 and March 2006 to evaluate the current state of the law, how it could be improved, and whether it should in fact be improved. Some measures the U.S. could take are more controversial than others. For example, it might be more acceptable for the U.S. to effectuate change through the SOLAS Convention, rather than unilaterally imposing stringent regulation upon the industry, which might further enhance its reputation of overstepping its boundaries in the global arena. Taking no action to strengthen the U.S.'s jurisdiction, however, could prove detrimental to American citizens both at sea and at home. The ICCL maintains that it "fully acknowledges these incidents [of crime on board and missing persons and] ... reports any such incident to the proper authorities and cooperates

105. See Briefing Memorandum, supra note 18, at 11-12 (explaining ship will communicate passenger's last known location and ship's approximate location at that time to Coast Guard so appropriate area of sea can be searched).

106. See Congressional Hearing I, supra note 1, at 75 (stating ships have either isolation cabin or designated cabin with posted guard). Cruise officials were reluctant to disclose extensive details regarding their security measures as part of a public record. See id. at 60, 67 (arguing it may "potentially compromise the security plans").

107. See id. at 3 (“According to the industry experts, a wide range of criminal activities, including drug smuggling, sexual assaults, piracy and terrorism threatens security of maritime travel and trade.” (quoting Representative Shays)). The stated purpose of the first hearing was to examine "the complex web of laws, treaties, regulations and commercial practices meant to protect lives and property in an increasingly dangerous world." Id. (noting multiple countries might assert jurisdiction depending on incident in question); see also Congressional Hearing II, supra note 6, at 1 (“Today, we continue our examination of the intricate web of treaties, laws, regulations, and industrial practices intended to protect lives, rights, and property in the maritime realm.” (quoting Representative Shays)). For a brief overview of the first hearing, see infra notes 116-23 and accompanying text. For a brief overview of the second hearing, see infra notes 124-29 and accompanying text.

108. For a further discussion on the U.S.'s possible methods of enforcing its jurisdiction more broadly, see infra notes 132-83 and accompanying text.

109. See, e.g., International Maritime Organization FAQ, supra note 44 (crediting U.S. Coast Guard with implementation of fire safety amendments to SOLAS Convention). For a further discussion on Canada's somewhat unilateral regulation of the cruise industry, see infra notes 167-69 and accompanying text.

110. See Congressional Hearing I, supra note 1, at 25 (implying weak domestic port security puts all Americans at risk).
Section A briefly summarizes the recent Congressional hearings. Section B addresses the possibility of enhancing the FBI's resources and lowering its current minimum threshold for responding to an alleged crime at sea. Section C suggests that requiring a continued U.S. law enforcement presence aboard cruises may help secure American passengers' safety at sea. Finally, Section D explores the possibility of developing new U.S. laws applicable to the cruise industry or, alternatively, expanding upon existing applicable law.

A. Congressional Hearings on International Maritime Security

On December 13, 2005, the House of Representatives' Government Reform Committee, the National Security, Emerging Threats, and International Relations Subcommittee, and the Criminal Justice, Drug Policy, and Human Resources Subcommittee held their first joint hearing on international maritime security. U.S. Representative Christopher Shays (R-CT) chaired the hearing he called in response to the "growing manifest of unexplained disappearances, unsolved crimes and brazen acts of lawlessness on the high seas." The witnesses who testified included representatives from

\[\text{ICCL, ICCL Statement: Congressional Hearing, Dec. 12, 2005, http://www.iccl.org/pressroom/pressrelease.cfm?type=a&whichrel=83 (acknowledging U.S. federal and state authorities may investigate cruise ship crimes domestically, and FBI may investigate and prosecute such crimes involving Americans internationally, unlike crimes occurring on land of other countries). But see Congressional Hearing II, supra note 6, at 132 ("[T]hat lack of accountability seems to be a by-product of either the companies thumbing their noses at Federal law, or simply that there is a legal twilight zone where they can pick and choose what laws they will follow." (quoting Ira Leonard, passenger who experienced sizeable theft while on board cruise ship)).}\]

\[\text{112. For a further discussion providing an overview of the Congressional hearings held regarding international maritime security, see infra notes 116-29 and accompanying text.}\]

\[\text{113. For a further discussion on using the FBI to regulate the cruise line industry more stringently, see infra notes 132-44 and accompanying text.}\]

\[\text{114. For a further discussion on the prospect of requiring a continued American law enforcement presence on board cruises carrying American passengers, see infra notes 145-59 and accompanying text.}\]

\[\text{115. For a further discussion on the possibility of expanding relevant American legislation regulating the cruise line industry, see infra notes 162-83 and accompanying text.}\]

\[\text{116. See Briefing Memorandum, supra note 18 (providing relevant briefing documents to committees' and subcommittees' members).}\]

\[\text{117. See Congressional Hearing I, supra note 1, at 4 (quoting Representative Shays's opening statement). Representative Shays continued:}\]

What information is given to passengers on the risks of international travel by sea? How are missing person reports investigated? How and when is it determined if a crime is involved? How are jurisdictional conflicts resolved? Are there better practices in technology that should be
the Coast Guard, Navy, FBI, ICCL, and individual cruise lines.\textsuperscript{118} The families of those who disappeared from cruise ships and victims of other cruise ship incidents did not testify at this hearing.\textsuperscript{119} Instead, they testified at the subsequent hearing in March 2006.\textsuperscript{120} The first hearing was mainly exploratory. The purpose was to inquire about the protection and safety of American passengers at sea and both the legal and industry procedures that apply when there is a missing person possibly linked to a crime.\textsuperscript{121} The hearing’s outcome included several requests for detailed information regarding security procedures and statistics from cruise industry officials, an agreement to develop formal requirements for reporting incidents at sea, and plans to hold private hearings on sensitive security procedures.\textsuperscript{122} Legislation was not proposed at the time because the hearing was held only to determine whether there is a problem that the U.S. should or even can address through legislation.\textsuperscript{123}

The second hearing, held in March 2006, focused on the lack of uniform standards regarding both incident reporting and security procedures to be followed after an incident occurs.\textsuperscript{124} Victims, used to protect passengers in the alluring but unforgiving marine environment?

\textit{Id.} at 4 (asking “those most involved in responding to maritime crisis to describe current legal and operational security standards”).

\textsuperscript{118} See \textit{id.} at 2-3 (listing witnesses present to testify).

\textsuperscript{119} See \textit{id.} at 11 (suggesting it was best for families to testify later at separate hearing).


\textsuperscript{121} See \textit{Briefing Memorandum, supra} note 18, at 3 (setting forth two main hearing issues). The official issues were phrased as follows: “What decision-making procedures and processes are in place to determine the extent to which the US government responds to a ship being attacked by terrorists or pirates? What jurisdictional conflicts occur when United States citizens traveling on a foreign flagged vessel are involved in a criminal incident?” \textit{Id.} (providing background on incidents at sea and relevant law). The briefing memorandum also set forth specific questions the witnesses were asked to address. See \textit{id.} at 8-9 (separating questions into two sets, one for each panel of witnesses).

\textsuperscript{122} See \textit{Congressional Hearing I, supra} note 1, at 70 (proposing further action); \textit{see also} International Cruise Victims Organization, \textit{supra} note 5 (providing updated information on official developments regarding cruise industry).

\textsuperscript{123} See \textit{Congressional Hearing I, supra} note 1, at 3 (inquiring about current law in place regarding cruise industry and its application).

\textsuperscript{124} See, e.g., \textit{Congressional Hearing II, supra} note 6, at 137 (asserting that passengers did not know how to report passenger overboard and cruise staff “seemed somewhat confused” about procedure to follow in response to report of passenger overboard (quoting Brian Mulvaney, friend of girl who died while cruising)). Mr. Mulvaney is a family friend of the O’Briens, who lost their fifteen-year-old daughter...
experts, and industry representatives testified and answered questions. Speakers openly and repeatedly questioned the cruise industry's motivation to report accurate crime statistics to U.S. agencies. Specifically, participants debated whether or not statutory requirements to report incidents already exist. International Cruise Victims submitted a list of suggested improvements to aid passenger safety and security, including provisions on required background checks for crewmembers, law enforcement presence on board, securing crime scenes, structural enhancements, surveillance cameras, security bracelets, procedures for missing or overboard passengers, rape investigations, bad weather, cruise line accountability, and congressional intervention. The second hearing concluded with Representative Shays requesting that: (1) the cruise lines investigate what legal requirements are already in

while on a cruise because she was served more than ten drinks by the cruise's bartenders and consequently fell overboard. See id. at 119 (quoting Brian Mulvaney). "[T]his is an industry that is not used to visible consumer complaints, and as the industry continues to grow, they will need to find a more uniform standardized security standard." Id. at 5 (quoting Representative Dennis Kucinich and positing reason for cruise industry's lack of standards).

125. See id. at 1-2 (indicating testimony was intended to further illuminate "an unpredictable combination of facts, circumstance, and happenstance that may or may not mean the protections of U.S. laws are available to those in peril on the sea" (quoting Representative Shays)).

126. See id. at 7 ("[T]he number of crimes and incidents aboard cruise ships which was not disclosed until two congressional subcommittees demanded them and the reliability of that data leads Congress to suspect that the whole truth is not being told." (quoting Representative Dennis Kucinich)). The cruise industry received negative publicity in the mid-1990s for lying to the U.S. government, as well as the public, about environmental law violations, which resulted in several felony convictions and fines. See id. at 150 ("Yet this is the same industry that currently U.S. citizens rely upon to, 'voluntarily report crimes,' as well as to voluntarily implement adequate security aboard the ships, and to adequately conduct investigations of any allegations of crimes aboard their cruise ships." (quoting Brett Rivkind, maritime attorney)).

127. See id. at 181 (stating Congress passed legislation in 1998 requiring "all ships, regardless of registry, sailing to or from a U.S. port, to report any felony that occurs in a place subject to U.S. jurisdiction to the FBI" (quoting Lawrence W. Kaye, maritime attorney)). But see id. at 217-18 (quoting Representative Shays and Attorney Brett Rivkind and noting neither U.S. Coast Guard nor president of Royal Caribbean Cruise Line believes there is any statutory requirement for cruise lines to report crimes). Kaye was referring to a section in the Code of Federal Regulations. See Security of Passenger Vessels, 33 C.F.R. 120 (1998) (requiring owner, operator, charterer, or security officer of passenger vessel to report all felonies committed on board to FBI). The U.S. Coast Guard, however, interprets this provision as applicable only when the vessel is within U.S. waters. See Congressional Hearing II, supra note 6, at 264-65 (supplying letter from U.S. Coast Guard Admiral).

128. See Congressional Hearing II, supra note 6, at 46-48 (setting forth recommendations for improved passenger security, some of which were discussed further during course of hearing).
place for reporting crimes; (2) what the cruise lines voluntarily do beyond those requirements; (3) what statistics on crimes the cruise lines have maintained for insurance purposes; and (4) the feasibility of implementing the International Cruise Victims' suggestions for improvement.129

On June 28, 2006, Representative Shays introduced the Cruise Line Accurate Safety Statistics Act ("CLASS Act") to Congress.130 The purpose of the Act is "[t]o require the owner of a cruise ship . . . to report . . . crimes that occur on the cruise ship in which a citizen of the United States was a victim . . . ."131 The following elaborates on some suggested improvements to U.S. cruise industry regulation.

B. Lower the FBI's Minimum Threshold & Enhance Its Resources

In the Smith case, newlywed George Smith disappeared from aboard a cruise ship in the Mediterranean Sea while on his honeymoon.132 One of the most pressing questions arising after George Smith's disappearance is why the U.S. was not involved in either investigating the alleged crime scene or in collecting evidence.133

129. See id. at 255-57 (quoting Representative Shays and requesting formal response from cruise lines within month from date of hearing).


131. Cruise Line Accurate Safety Statistics Act, H.R. 5707, 109th Cong. (2006) (legislating requirement to report crimes and other information, inspection of cruise ships, disclosures by cruise lines, penalty, and definitions). As of the date of publication, the Act was pending within the House Committee on Transportation and Infrastructure, which referred it to the Subcommittee on Coast Guard and Maritime Transportation. See The Library of Congress: Thomas, H.R. 5707, http://thomas.loc.gov/ (search "Search Bill Text: Bill Number" for "H.R. 5707"; then follow "Bill Summary and Status" hyperlink) (last visited Sept. 17, 2006) (setting forth major congressional actions taken upon Act thus far).

132. For a further discussion on the Smith case, see supra notes 3, 15, 104 and infra notes 133, 138 and accompanying text.

133. See Congressional Hearing I, supra note 1, at 41 (stating ship docked in Turkey and allowed passengers and crewmembers to disembark as usual, potentially removing crucial evidence from ship). Turkish authorities were rushed off the ship before completing their investigation so the ship could get to the next scheduled port on time. See id. The cruise line maintains it contacted the FBI to investigate, secured the scene, thoroughly searched the ship, interviewed crewmembers and passengers with possible knowledge, and collected as much evidence as possible, which it turned over to the FBI. See id. at 50 (disputing allegations that cruise line improperly handled Smith case). Further, the ICCL's president maintains that Turkish officials would have been welcome to stay on board and travel with the ship if they had thought it was necessary and that the FBI
The FBI's ability to intervene in a crime investigation at sea involving Americans depends on many factors, including: the type of crime, the ship's location when the crime was committed, the ship's departure and arrival ports, the ship's country of registration, the citizenships of the perpetrator and victim, the laws of other countries with potential interests, the U.S.'s political relationship with those countries, and the applicable international law. The FBI currently operates approximately fifty-nine offices worldwide, which determine whether the U.S. has jurisdiction to investigate an alleged crime and whether it will require the involvement of other law enforcement authorities, either from the U.S. or foreign countries. If it can investigate the alleged crime, the FBI begins once it is reasonable and practical to do so.

Interestingly, the FBI maintains certain minimum thresholds that must be overcome before it will open a case file and participate in the investigation. For example, in the Smith case, the FBI apparently declined involvement and instead ceded authority to Turk...
A related hindrance to the FBI's involvement is that the FBI must actually be notified before it can become involved, much less become involved in a timely manner. Sometimes, notification of any law enforcement agency, American or otherwise, depends on whether the passenger requests it. A significant impediment to the FBI's ability to collect evidence when an alleged crime occurs is that the first law enforcement agency on the scene, regardless of its country of origin, must immediately secure the scene and then determine whether to involve other countries' law enforcement agencies. Even if the FBI is notified, it may take some time for the U.S. to decide to become involved in or lead an investigation. Once the FBI relinquishes its right of involvement in an investigation to another country's authorities, that country becomes the sole decision-maker. Theoretically, if the U.S. had more FBI officials stationed globally, and perhaps some stationed at sea, it would more often be the first country to respond.

138. See Congressional Hearing I, supra note 1, at 77, 80 (acknowledging FBI made no request to take any action, other than what cruise line did to involve Turkish officials, and maintained presence at Turkish consulate that day). The FBI's policy is "to defer to local police authorities, working in conjunction with the FBI, to conduct the initial investigation and turn over the results to the FBI." Royal Caribbean International, Press Release, Jan. 27, 2006, http://www.royalcaribbean.com/ourCompany/pressCenter/pressReleases/info.do?sessionid=0000SrF6blLnQpM6st508mg5e6Bu10kohi76p?prDate=01-27-2006&prCode=A (dispelling popular myths regarding Royal Caribbean's handling of George Smith case and mentioning FBI confirmed policy at December 2005 congressional hearing on international maritime security).

139. See Christopher Elliott, Summer Cruises: Crime; Mystery at Sea: Who Polices the Ships?, N.Y. TIMES, Feb. 26, 2006, at 59 (reporting ship's security officer has discretion over whether particular crime is "serious" enough to report to FBI).

140. See id. (mentioning passengers may take initiative in reporting crime to U.S. or foreign local authorities if ship's security officers decline or fail to do so).

141. See Congressional Hearing I, supra note 1, at 18 (confirming that U.S. may certainly respond to any ship's call for help in dealing with life-threatening incidents).

142. See id. at 78 (imparting FBI may allow another country's authorities to decide whether to preserve potential crime scene or instead to allow ship to continue its travels).

143. See id. at 79 (verifying that if FBI asserted its authority and gave directions regarding investigation of Smith case, cruise line would have cooperated fully). One cruise line official said that as far as he knew, the FBI had never been denied "full access at their request." Id. The official claimed ships have been delayed for investigation every time the FBI deemed necessary. See id. (pointing out further nonoccurrence of flag state interfering with U.S.'s jurisdiction involving U.S. citizen at sea).

144. See id. at 13 (conveying number of FBI's global offices will increase over next few years).
C. Require a Continued U.S. Law Enforcement Presence on Board Cruise Ships Carrying American Citizens

Currently, U.S. federal law enforcement agencies, including the FBI, Navy, and Coast Guard, must obtain permission from a cruise ship's flag country before beginning a criminal investigation; U.S. agents cannot even board a cruise ship that may be the scene of a crime committed by or against an American citizen if the ship is located beyond U.S. waters.145 If the ship is located within U.S. waters, however, American criminal law unquestionably applies.146

In addition, a continued American law enforcement presence on board cruise ships is desirable because cruise lines resist the idea of installing complete video surveillance systems on board.147 Also, cruise lines oppose arming their security officers.148 Cruise officials have, however, requested armed escort ships when traveling through potentially dangerous areas.149 An armed U.S. law enforcement officer on board would perhaps be more suitable, especially because armed security guards are somewhat commonplace in the U.S.150 Requiring cruise ships to carry federal law enforce-

145. See id. at 6 (noting most cruise ships sail under foreign flags and are not subject to U.S. jurisdiction unless they are at U.S. port or in U.S. territorial waters); see also Congressional Hearing II, supra note 6, at 180 (quoting Lawrence Kaye, maritime attorney, and stating he is unaware of any instance in which FBI was denied permission to investigate because foreign-flagged ships usually welcome FBI aboard "with open arms").

146. See Congressional Hearing I, supra note 1, at 32 (maintaining that both common and statutory law would apply to cruise line within U.S. waters that either failed to report felony or was guilty of criminal negligence when contributing to or responding to report of potential criminal incident).

147. See id. at 73 (citing massive amount of area coverage required and possible privacy concerns regarding private balconies).

148. See Cruise Ships Vulnerable to Attacks, Nov. 9, 2005, http://www.military.com/NewsContent/0,13819,80133,00.html (quoting president of maritime security consulting company and opining armed cruise line security personnel may project wrong image to some passengers). A public relations official suggested responding too aggressively to a minor problem might make the incident both more frightening and newsworthy than warranted. See id. (pointing out that official does not work with cruise lines).


ment officers is an idea presently circulating among attorneys involved in cases against cruise lines.151

Alternatively, the U.S. could require cruise lines to arm their security guards because these guards derive their authority from a contract with their employer, rather than from a governmental entity.152 This allows them more flexibility in effectively performing their duties.153 Moreover, because the guards would not be government agents, they would not be subject to the same regulations, such as the requirement of probable cause before questioning a potential suspect; thus, they could serve as a first line of defense before American law enforcement agents reach the scene.154 Such guards, as private actors, would still be subject to tort suits for any false arrests or other illegal actions, which would likely prevent guards from enforcing the law too aggressively.155

This system is analogous to the federal air marshals that have flown on some U.S. flights since 1968.156 Marshals, however, are federal law enforcement agents.157 Created in the 1960s, the air marshal program was designed to counter hijacking attempts and safeguard flights and airports from other kinds of crimes.158 After

151. See Martinez, supra note 4 (suggesting team of federal law enforcement officers on board could independently conduct investigation when crime occurs).
152. See Security Guard, supra note 150 (noting states often require additional training for security guards carrying weapons).
153. See id. (mentioning security guards are often confused with police officers because of similar uniforms and duties). This contract creates an “agent of the owner” relationship, giving the guard much discretion in performing his or her duties. See id. (remarking police officers technically have almost no discretion and must arrest people for minor offenses, whereas armed guards could choose whether to make citizen’s arrest in similar circumstances).
154. See id. (suggesting possibility for U.S. to “deputize” security guards, granting them additional powers).
155. See id. (noting police officers are not subject to tort actions because they are granted civil immunity).
September 11, 2001, air marshal positions increased from approximately thirty to several thousand.\textsuperscript{159} Recently, the Travel Security Administration began an effort to expand air marshals' role beyond protecting airline travel safety.\textsuperscript{160} The exact number of air marshals currently in service remains classified, but some believe there are not enough to support expansion.\textsuperscript{161}

D. Enact New Legislation or Expand Upon Existing Legislation Regulating the Cruise Industry

Although few cruise ships are American-owned or controlled, the U.S. could coerce the industry to adopt standards the U.S. deems necessary because Americans generate more than half of the industry's overall business.\textsuperscript{162} For example, the U.S. could simply bar cruise ships from docking at U.S. ports.\textsuperscript{163} This conduct is permissible because the U.S. retains exclusive jurisdiction over the twelve miles of sea immediately surrounding its borders.\textsuperscript{164} The U.S. could probably completely bar cruise ships from passing through its waters if cruise lines refuse to implement U.S. regulations because countries can deny this right to ships if they believe a threat to national security exists.\textsuperscript{165} Although the U.S. did not sign the Convention, it can still rely on the customary international law previously discussed to justify its decisions regarding cruise lines.\textsuperscript{166}

\begin{footnotesize}
\begin{enumerate}
\item[159.] See Schleicher, \textit{supra} note 157 (relaying that Transportation Security Administration received 200,000 applications immediately after September 11, 2001).
\item[161.] See \textit{id.} (sharing one pilot's assertions that "air marshals ought to stick to airplanes").
\item[162.] For a further discussion providing the cruise industry's passenger statistics, see \textit{supra} note 41 and accompanying text. Congress has already indicated an interest in asserting the U.S.'s expectations of cruise ship safety when carrying American passengers. See \textit{Congressional Hearing I, supra} note 1, at 8 (remarking Congress would first like to examine industry's own regulation and whether U.S. is currently doing enough to regulate ships).
\item[163.] For a further discussion summarizing U.S. sovereignty over the ocean immediately surrounding its coastline, see \textit{supra} notes 74-78 and accompanying text.
\item[165.] See \textit{Restatement (Third) of Foreign Relations Law} § 513 (1987) (explaining all countries' ships have right of innocent passage through other countries' territorial waters). Passage is innocent if it is not harmful to the territorial country's "peace, good order, or security." \textit{Id.} (stating country may not suspend privilege of innocent passage unless essential to national security).
\item[166.] For a further discussion on the United Nations Convention on the Law of the Sea, see \textit{supra} notes 56-65 and accompanying text. For a further discussion
\end{enumerate}
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The U.S. could follow Canada's example by enacting regulations applicable to all cruise ships visiting its ports. Canada's Marine Transportation Security Act sets forth specific security requirements, including mandatory company and ship security officers, detailed records of security training and drills, and a detailed vessel security plan. No evidence shows that these regulations have harmed Canada's cruise industry.

Another avenue for the U.S. is tracking criminal trends on board ships and requiring employee training in response to specific types of crime. The IMO has the authority to inspect any training programs the U.S. might implement. The IMO already adopted an initiative to develop training programs and would likely welcome any American guidance in light of the U.S.'s demonstrated initiative and interest in heightened security standards.

The U.S. has already expressed an interest in more carefully monitoring the industry. Representative Shays, who chaired the congressional hearing on international maritime security, asserts, "I think we need honest statistics, and I think the way we get honest statistics is if we require it under law, with penalties if they don't comply with applicable customary international law, see supra note 67 and accompanying text.


170. See Anderson, supra note 167 (describing cruise lines' individual initiatives in dealing with trend of sexual assaults at sea).

171. See Frequently Asked Questions, supra note 52 (confirming that U.S. is member of International Convention on Standards of Training, Certification, and Watchkeeping for Seafarers, which allows IMO to oversee work done by member governments in ensuring they meet Convention's requirements).

172. See IMO Adopts Comprehensive Maritime Security Measures, supra note 69 (describing SOLAS amendment inviting IMO to provide training guidance for security officers and performance standards). The conference that developed the amendments specifically requested that outside entities contribute to maritime and port security activities. See id. (stating this contribution would help developing countries who may not have resources to develop their own programs).

173. For a further discussion on the cruise industry's questionable crime statistics, see supra notes 7-13 and accompanying text.
give [them] to us.” 174 For example, the IMO previously implemented an anti-piracy campaign which, in part, requires members to report piracy statistics. 175 It appears that many cruise lines would be willing to implement this policy because of their strong interest in protecting passengers’ safety at sea. 176 This is especially true because cruise lines realize that if passengers were to lose confidence in cruise ships’ safety, the cruise industry would suffer financially. 177

The U.S. could also address the lack of American law requiring cruise ships to preserve evidence from alleged crime scenes. 178 There are no external standards imposed upon the cruise lines when there may have been a crime committed on board. 179 The international law governing the exchange of evidence between countries can be complex and too cumbersome to be effective. 180 It may be technically impossible for the law to be effective if there is simply no evidence to obtain. 181 Also, Congress acknowledges that it should define which crimes should be reported and set requirements for reporting them. 182 Finally, the U.S. may want to consider

174. Martinez, supra note 4. "I want to know how big the problem is." Id. (quoting Representative Shays). This is in response to the common sense notion that the U.S. should not amend or enact new legislation regulating the industry unless there is truly a problem to remedy.

175. See Frequently Asked Questions, supra note 52 (emphasizing IMO is fully capable of successfully collecting global statistics on particular problem and thus could collect similar statistics on cruise ship crime).

176. See Anderson, supra note 167 ("[w]e knew that an incident could be even more traumatic when it happens on a cruise ship... Our main concern was to protect the safety of our passengers and crew." (quoting cruise line official)).

177. See Larger Ships, supra note 36 (asserting that safety is “vital concern” because cruise ships have very high profile and poor safety record might undermine success).

178. See Congressional Hearing I, supra note 1, at 19 (observing that there is no requirement to preserve evidence of crime involving U.S. citizen if crime occurs in international waters).

179. See id. at 24 (communicating that U.S. Navy has established basic protocols with cruise lines regarding general safety on board). The U.S. Coast Guard has helped the industry develop a security officer program, but there is no standard for reporting crimes involving Americans to U.S. authorities. See id.


181. See Cowan, supra note 3 (reporting evidence was destroyed); Cruise Cover Up?, supra note 1 (emphasizing no attempt to collect evidence and donation of victim's belongings to charity).

182. See Congressional Hearing I, supra note 1, at 28 (posing more accurate crime statistics would help Congress determine whether and how to further regulate cruise industry). The Chairman questioned the possibility of a requirement that all missing person cases aboard cruise ships "be treated as a potential crime
becoming a signatory to the Convention in order to influence its potential amendment, enforcement, and application. 183

V. CONCLUSION

The cruise industry boasts a glamorous and alluring history, not to mention a reputation of providing carefree vacations. 184 The recent shocking reports of disappearing passengers may unjustly distort the cruise industry's actual safety record. 185 On the other hand, these stories reveal serious holes in the industry's protocols for responding to missing person reports. 186 At the very least, cruise lines could be more sensitive and sympathetic toward the victims' families. 187

Because the number of passengers who have disappeared seems low, relative to both the total number of passengers who go on cruises per year and the total number of people who go missing in the U.S. every day, it is difficult to argue that serious industry reform or oversight is truly necessary. 188 Nevertheless, given the amount of business the U.S. provides to cruise lines, it is reasonable for the U.S. to mandate even higher standards for the industry. 189

until determined otherwise." See id. at 42 (indicating some doubt as to whether this could legally be done and whether it should be done).

183. For a further discussion concerning the U.S.’s status as a non-signatory to the Convention, see supra notes 64-65 and accompanying text.

184. For a brief overview of the cruise industry’s history and modern reputation, see supra notes 26-41 and accompanying text.

185. For a sample of these sensationalist stories, see supra notes 1-3 and accompanying text. For a further discussion of the cruise industry’s safety record, see supra notes 7-13 and accompanying text.

186. See, e.g., Congressional Hearing II, supra note 6, at 258 (quoting Captain William Wright, senior vice president of Marine Operations for Royal Caribbean International). Captain Wright argues:

"Typically, when you go and do an investigation ... you discover almost always there is an error chain. Very rarely is it one single mistake that one single person or crew member made that resulted in something happening. If you go back and do the detail work, you are going to find it is a series of things where the system failed, there was a systemic failure. And you need to understand that. That is something that we do on a regular basis, and I think the chairman’s subcommittee is helping to that end.”

Id. For a further discussion on the cruise industry’s procedures when a passenger is reported missing, see supra note 105 and accompanying text.


188. For a further discussion on the cruise industry’s missing persons statistics, see supra notes 7-13 and accompanying text.

189. For suggested improvements to the cruise industry’s practices, see supra notes 132-83 and accompanying text.
Higher standards seem all the more reasonable in light of the complex law that applies to the industry under different circumstances, making it difficult for American passengers to know what they can expect and what rights they have when something goes amiss at sea. This is what the International Cruise Victims Organization and Representative Shays hope to remedy through the CLASS Act.

One thing Americans need not worry about when cruising is whether pirates will successfully attack the ship. Cruise ships are traditionally hard to attack and are not the most attractive target for pirates. Nonetheless, cruise lines prepare for the possibility by increasing security at night and training crewmembers on attack prevention.

For now, the best advice any cruise ship passenger can heed is to use common sense and be aware of his or her surroundings. For example, in the U.S., there are laws prohibiting bartenders from serving drinks to intoxicated people, but there are no such laws at sea. Michael Crye, President of the International Council of Cruise Lines, stresses: "People should not assume because they're on a ship that somebody is going to be there always to take care of you. You are onboard a vessel with sometimes up to several thousand people, and not everybody on the ship is going to be your best friend." Perhaps Herman Melville inadvertently summarized...

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190. For a further discussion setting forth the law and regulations applicable to the cruise industry, see supra notes 42-106 and accompanying text.

191. For a further discussion on the CLASS Act, see supra notes 130-31 and accompanying text.

192. See Anderson, supra note 167 (noting pirates are not found in cruise lines' major areas of operation); see also Congressional Hearing I, supra note 1, at 65 (reporting recent attack on Seabourn Spirit was first known pirate attack against cruise ship in over twenty years).

193. See Anderson, supra note 167 ("Cruise ships are well-lit, fast, and hard to board." (quoting cruise line official)). Pirates generally target commercial ships with small crews and valuable cargo on board. See id. (noting pirates seek least amount of resistance when targeting ships to attack).


196. See id. (noting cruise lines have internal rules requiring wait staff to stop serving intoxicated passengers and claiming staff follows rules).

197. Id. ("[O]n land as well as at sea, vacationers often let their guard down and may do things they wouldn't do at home. On ships, vacationers may think they're in a safe zone because access is limited.")
maritime law the best: “For a ship is a bit of terra firma cut off from the main; it is a state in itself; and the captain is its king.”

Sarah J. Tomlinson*

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<th>Country of Ship’s Registry</th>
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<th>Relevant U.S. Statute</th>
<th>Who Has Jurisdiction?</th>
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<td>18 U.S.C. § 7(8)</td>
<td>U.S., if ship is departing from or arriving in the U.S. and offense is committed by or against U.S. nationals (subject to international law and applicable treaties)</td>
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