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An Examination of the Evolution of Crime at Sea and the Emergence of the Many legal Regimes in Their Wake

Leticia M. Diaz
Barry Hart Dubner

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AN EXAMINATION OF THE EVOLUTION OF
CRIMES AT SEA AND THE EMERGENCE
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Leticia M. Diaz and Barry Hart Dubner†

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†Leticia M. Diaz, Professor of Law, Dean, Barry University School of Law; J.D., Rutgers University School of Law, Newark (1994); Ph.D. (Organic Chemistry), Rutgers University, Newark (1988). Barry Hart Dubner, Professor of Law, Barry University, Andreas School of Law, Orlando, Florida; J.D., New York Law School; LL.M., University of Miami, School of Law; LL.M., New York University School of Law; J.S.D., New York University School of Law. The authors would like to thank and acknowledge Professor Barry H. Dubner’s research assistant, Michael Usleber, and Dean Leticia M. Diaz’s research assistant, Stacy Shelton, whose patience in researching, editing, preparing, and organizing the footnotes proved invaluable.
I. Introduction

Let us pretend that pirates are chasing a cruise ship on the high seas—a "mother" ship having provided cover for two high-powered boats with heavily armed crews—off the coast of Somalia. The cruise ship is flying an Albanian flag. It has a crew of over 1000 passengers, and Afghan refugees that were picked up from their sinking vessel. The cruise ship is also carrying sick passengers seeking medical assistance; and, some of the remaining passengers have jumped into the sea, hoping to be rescued by the United States (U.S.) Navy. Unbeknownst to the captain of the cruise ship, there are people on board being sent "under contract" to work in an escort service in a large city, thousands of miles from home.

As the reader may imagine, there are a myriad of problems resulting from this hypothetical scenario. What one may not be aware of are the variety of crimes arising at sea and the slow evolution of international law as states attempt to prescribe and enforce various treaties in order to make navigation at sea safe for commerce and for pleasure. One may query whether legal regimes have become overlapping and onerous to those persons seeking to enforce them.

Recently, newspaper articles on sea piracy committed by "Somalian pirates is on the rise." In fact,

[p]irate attacks rose dramatically off Somalia in the first nine months of 2007, with twenty-six reported cases, up from eight during the same period last year according to International Maritime Bureau [(IMB)]

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figures. Somalia was not the only place in the world where attacks occurred. Nigeria also suffered twenty-six attacks so far this past year, up from nine previously, the bureau said.

Somalia was not the only place in the world where attacks occurred. The number of overall pirate attacks rose fourteen percent in the world since 2006. A total number of 198 attacks on ships were reported from January to September, 2007, an increase of 174 from the same period in 2006. Fifteen vessels were hijacked, sixty-three crew members were kidnapped and three persons were killed. In fact, looking at the trends for 2007:

The total number of attacks reported in 2007 indicates an overall increase in the number of attacks as compared to 2006. Compared to 2006, there has been an approximate 10% increase in the total number of attacks reported to the Piracy Reporting Centre. The significant increase in the incidents can be directly related to the increase in the reported incidents in

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3 See id. (stating that “[f]rom Africa to Southeast Asia, pirate activity is on the rise.”).
4 Id.
5 See id. (stating that “[f]rom Africa to Southeast Asia, pirate activity is on the rise.”)
6 Id.
7 Id.; see also INTERNATIONAL CHAMBER OF COMMERCE, INTERNATIONAL MARITIME BUREAU, PIRACY AND ARMED ROBBERY AGAINST SHIPS ANNUAL REPORT, at 17 (2007), available at http://www.nepia.com/fin/modules/Library/assets/IndustryNews/Documents/2007/January/230107%202006%20Annual%20IMB%20Piracy%20Report.pdf (“The total number of worldwide reported attacks decreased to 239 compared to 276 in 2005.”) [hereinafter ICC REPORT 2006]; see generally INTERNATIONAL MARITIME ORGANIZATION, REPORTS ON ACTS OF PIRACY AND ARMED ROBBERY AGAINST SHIPS ANNUAL REPORT - 2006, at 1 (2007), available at http://www.imo.org/includes/blastDataOnly.asp/data_id%3D18566/98.pdf (“From the information referred to above, it emerges that the areas most affected in 2006 were the Far East, in particular the South China Sea and the Malacca Strait, West Africa, South America and the Caribbean, the Indian Ocean and East Africa. Over the period under review, the number of acts reported to have occurred or to have been attempted decreased from 97 to 66 in the South China Sea and from 49 to 31 in East Africa. There was an increase in the number of incidents from 51 to 53 in the Indian Ocean, from 20 to 22 in the Malacca Strait, from 23 to 31 in West Africa and from 26 to 31 in South America and the Caribbean, over the 2005 figures. Most of the attacks worldwide were reported to have occurred or to have been attempted in the coastal States’ concerned territorial waters while the ships were at anchor or berthed. In many of the reports received, the crews were violently attacked by groups of five to ten people carrying knives or guns.”) [hereinafter IMO ANNUAL REPORT 2006].
8 Harris, supra note 2, at A6.
Nigeria (42) and Somalia (31) as compared to the attacks reported in Nigeria (12) and Somalia (10) in 2006. This rise can be attributed to the increased ability of the pirates to attack vessels further out at sea as well as being better armed, organized and last but not least the lack of proper law enforcement. Nigeria has recorded the second highest reported incidents in 2007 with the highest number of vessels boarded (35). The attacks and kidnappings are all being justified under the umbrella of political change. From the shipping industries point of view this is nothing short of being criminal. Somalia has seen the highest hostages taken (154) in eleven hijackings. The recent intervention of the international community and the coalition forces may prove to be the only way forward in curbing the enthusiasm of the pirates who have until now shown complete disregard for the law.9

Before addressing the problems contained in the presented scenario, let us review the range of crimes that occur at sea and how they are currently treated by the international community. As a starting point, this review can be accomplished, in part, through the data published each year by the U.N. General Assembly Report of the Secretary-General in its “Oceans and the Law of the Sea.”10 In order to see the overall picture, it is important to understand the key role that shipping plays in world trade.

A. Economic Aspects of Shipping

Shipping plays a key role in world trade. In 2005, “[w]orld seaborne trade (goods loaded) recorded another consecutive annual increase, reaching a record billion tons. The annual growth rate was 3.8[%]. . . . The world merchant fleet expanded by . . . a remarkable 7.2[%].”11 This was “the highest increase since 1989”
and can be explained by a growth in "newbuilding deliveries" and a minimal amount of "broken up and lost" tonnage. Furthermore, "[t]he average age of the world fleet dropped marginally to 12.2 years with almost 27.1[%] of the fleet twenty or more years old . . . . The share of the world fleet registered in developing countries reached 22.7[%]. This percentage was, predominantly a result of investments made by ship-owners in Asian developing countries, accounting for 78.6[%] of the developing countries’ total fleet. The tonnage in open registries grew at a rate of 6.9[%], and their nationals continued to own two thirds of the tonnage registered in major open-registry countries. “Thus, beneficial ownership remained concentrated in 10 major ship-owning countries.”

However, without safe and secure crime-free routes for navigation, shipping would be rendered useless as the cheapest and most efficient method to transport goods. Regarding the structural safety of passenger ships, there is a need to improve the design in order to better the chance for survivability.

B. Safety of Passenger Ships

According to the amendments to the International Convention for the Safety of Life at Sea (SOLAS) adopted by the International Maritime Organization (IMO), future passenger ships, including large cruise ships, will have to be “designed for improved survivability so that, in the event of a casualty, persons can stay safely on board as the ship proceeds to port.” The amendments also incorporate criteria for the “casualty threshold,” that is, “the amount of damage a ship is able to withstand, according to the design basis, and still safely return to port.” These amendments are expected to be entered into force on July 1, 2010. The IMO also adopted new fire regulations for cabin balconies on passenger


12 Id.
13 Id.
14 Id.
15 Id.
16 UNCTAD Review of Maritime Transport 2006, supra note 11.
18 Id.
19 Id.
vessels, which entered into force on July 1, 2008.20

The problems contained in our scenario do not involve the structure of the ship, but rather the possible changes to health and survival to those passengers aboard the ship. Using the scenario as an example, this article will set forth (a) the various crimes committed at sea relating to our cruise ship; (b) the applicable jurisdictional law of the sea; (c) the conventional wisdom, or lack thereof, on resolving the issues regarding sea piracy, refugees, human trafficking and flags of convenience; and (d) the approaches utilized in resolving these problems.

II. A General Overview of Crimes at Sea and Jurisdiction

A. Piracy (Including Armed Robbery Against Ships)

The International Maritime Bureau (IMB), maintains a Piracy Reporting Center (PRC) in Kuala Lumpur, Malaysia.21 Among other forms of assistance, the PRC issues reports of piracy and armed robbery on the sea on a weekly, quarterly, and annual basis.22 The IMB, “for statistical purposes,” defines piracy and armed robbery as “[a]n act of boarding or attempting to board any ship with the apparent intent to commit theft or any other crime and with the apparent intent or capability to use force in the furtherance of that act.”23 Hence, this definition covers acts of piracy whether the ship is “berthed, at anchor, or at sea.”24 It also covers attempted attacks; however, petty thefts are excluded unless the thieves are armed.25

In our scenario, the cruise ship is attacked by pirates. The reader should understand what a typical type of piratical act is in the twenty-first century:

Japanese operated ships have been targeted by pirates in Southeast Asia this year, but most of the attacks

20 Id. (Stating that these new fire regulations “were developed in response to the fire aboard the cruise ship Star Princess, while on passage between Grand Cayman and Montego Bay, Jamaica, in March 2006. The fire began on an external balcony and spread over several decks.”)
21 See ICC REPORT 2007, supra note 9, at 2 (“Outrage in the shipping industry at the alarming growth in piracy prompted the creation of the IMB Piracy Reporting Centre (PRC) in October 1992 in Kuala Lumpur, Malaysia.”).
22 Id.
23 Id. at 3.
24 Id.
25 Id.
were foiled, according to recent data compiled by a piracy monitoring center in Singapore and other maritime sources. The center for the Japan-initiated Regional Cooperation Agreement on Combating Piracy and Armed Robbery against Ships in Asia, or ReCAPP, publishes monthly and quarterly details of pirate attacks on its website. Although the incidence of piracy has dropped from recent years, danger still lurks in certain parts of the region based on these attempts to attack on Japanese and other vessels. In one case in April, pirates tried to attack the Japanese-operated chemical tanker Shoko Maru near Karimun Island in Indonesian waters. Up to six pirates came in two boats, waving iron bars and knives. Fortunately, the ship master managed to raise the alarm, and the pirates, who were in the engine room, fled. No one was injured, but some engine parts were reported missing. A more dramatic incident involved a Japanese-operated cargo ship, Pacific Discoverer in Lombok, Indonesia, also in April. The ship was surrounded by four boats and the pirates fired several gunshots. The Japanese ship managed to stave off the pirates by firing parachute flares into the air. Another case involved the Japanese-operated cargo vessel Grace Casablanca, which was attacked by knife-wielding pirates near Bintulu, Malaysia, in March. The pirates stole the ship's stores and escaped in their boat. A fourth case involved a Japanese-operated LNG tanker near Karimun, also in April. The LNG carrier had departed Niigata in Japan and was heading toward Singapore to lift bunkers when it was approached by pirates near Karimun. A crew member discovered four men in the steering room of the ship. One of the intruders was armed with a knife. The master of the tanker raised the alarm, mustered the crew and kept watch on the deck. The robbers reportedly fled. No injuries were sustained by the crew of six Japanese, four Filipinos and 25 Indonesians.26

In the second quarter of 2007, the IMB PRC received reports of eighty-five attacks making a total of 126 attacks from January to June 2007.\textsuperscript{27} By comparison, the PRC received reports of sixty-six attacks in the corresponding period in 2006 for a total of 127 attacks from January to June 2006.\textsuperscript{28} The IMB PRC also reports that attacks in Southeast Asia significantly decreased in the first half of 2007.\textsuperscript{29} "Indonesia, Malaysia and the Malacca Strait have reported 24, six and two attacks respectively in 2007 as compare[d] to 33, nine and three respectively in 2006."\textsuperscript{30} The increased cooperation between littoral states is suspected to be responsible for this decline.\textsuperscript{31} It should be pointed out that "[m]ore than 30[\%] of world trade and approximately half of the world’s oil shipments pass through the Malacca Straits."\textsuperscript{32}

The report goes on to state that "Nigeria has been one of the extreme hot spots in the last quarter, seeing an increase in number of attacks from six in the first quarter to 13 in the second quarter, bringing the total in the first six months of 2007 to 19."\textsuperscript{33} These numbers contrasted with the total number of seven incidents in the first six months of 2006 illustrates a serious upward trend because the attacks are mostly against foreign well workers from the oil rich Niger-Delta.\textsuperscript{34} "The attacks are carried out against the support and standby vessels to the oil rigs."\textsuperscript{35}

In addition, Somalia reemerged as a hot spot in the last quarter of 2006.\textsuperscript{36} As mentioned earlier, there has been a substantial increase in pirate attacks in this region with an increase from just one hijacking in the first quarter of 2007 to seven hijackings by the second quarter.\textsuperscript{37} Naturally, as the report points out, "[t]he civil war in Somalia makes it extremely difficult for the affected parties..."
to seek prompt and adequate assistance from authorities onshore, [therefore, the] IMB continues to advise vessels to stay at least two hundred nautical miles from the Somali coastline.\textsuperscript{38}

The aforementioned trends are in contrast to the steady decrease in incidents reported in Southeast Asia:

Over the last five years, there has been a significant drop in the incidents reported in Indonesia, where in 2003, there were 121 reported incidents and in 2007, there have been only 43 incidents. Malaysia, Malacca Straits and Singapore Straits have also seen steady decrease in reported incidents. This welcomed reduction has been the cumulative result of increased vigilance and patrolling by the littoral states and the continued precautionary measures on board the ships.

Authorities in Bangladesh have to be commended for their efforts in reducing the reported incidents from 47 in 2006 to only 15 in 2007. This should however, not be taken as an indication that the threat has ceased to exist. Masters are advised to maintain strict anti piracy watches especially while approaching the anchorage and while anchored. The nature of the attacks indicates that the pirates / robbers boarding the vessels are better armed and they have shown no hesitation in assaulting and injuring the crew. The total incidents in which guns have been used are 72. The total number of crew assaulted and injured is 64 as compared to 17 in 2006. This rise in the incidents indicates a breakdown in the capability of certain countries to address the problem.\textsuperscript{39}

Another typical type of incident, which disrupts maritime transportation, is reported by the IMB, as follows:

On 12 December 2007, pirates released the Japanese controlled chemical tanker after a six-week detention. Somali pirates hijacked the tanker on 28 October 2007 and had threatened to kill her 23 crew members if their ransom demands were not met. The US and Royal Navy played a key role in ensuring the tanker's safe

\textsuperscript{38} Id.
\textsuperscript{39} ICC REPORT 2007, supra note 9, at 24.
return after the negotiations were concluded. Overall, Somali hijackings for 2007 have been lucrative for the “gangs” involved – many millions of dollars have been paid in ransom to these “gangs.”

As a result of these many incidents, the IMO passed a resolution in the recently concluded 25th Session, on Piracy and Armed Robbery against Ships in and off the coast of Somalia. One of the key results from the resolution was that the IMO requested to have foreign vessels enter into the territorial waters of the Somalia Transitional Federal Government (TFG). Historically, this is a “first” attempt to resolve a problem that one of your author’s first started writing about thirty years ago. The IMO reports that:

Respecting the international conventions for territorial waters the naval units, whilst willing to assist vessels hijacked by pirates had initially hesitated to venture inside Somali territorial waters. Knowing this, the pirates would anchor hijacked vessels well inside the 12 mile limit, secure in the knowledge that no one would intervene to assist the crew. The intervention of the Coalition Navies, in the recent hijacking of two vessels, by entering the 12 mile limit could prove to act as a deterrent to the Somali pirates.

The next big hurdle is to: (a) establish a mechanism to turn pirates over to the local government for prosecution, (b) require that the country bordering its territorial sea have legislation to deal with piratical acts, and (c), as an alternative to (a) and (b), require that the flag state actually prosecutes pirates under their laws. This alternative, of course, is a fantasy, because there is usually no interest, “genuine” or otherwise, in dealing with a vessel carrying

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40 Id. at 36.
42 ICC REPORT 2007, supra note 9, at 36.
43 Id.
44 Flag State refers to the state with whom a vessel is registered, or whose flag the vessel flies. Alan Tan Khee Jin, The Regulation of Vessel-Source Marine Pollution: Reconciling the Maritime and Coastal State Interest, 1 SING. J. INT’L & COMP. L. 355, 365 (Jan., 1997).
THE EVOLUTION OF CRIMES AT SEA

a flag of convenience.\textsuperscript{45} It is ironic that it took piratical attacks against cruise ships, rather than commercial vessels, to acknowledge what should have been a traditional sovereign right of entry into territorial waters to protect persons against pirates. Protection of the cruise industry is actually increasing concern over human life!

Piracy and hijacking have become so dangerous that President Bush issued a "Policy for the Repression of Piracy and other Criminal Acts of Violence at Sea."\textsuperscript{46} The policy sets forth that "[t]he [U.S.] strongly supports efforts to repress piracy and other criminal acts of violence against maritime navigation."\textsuperscript{47} Naturally, the United States, as well as other nations, "relies heavily on "the secure navigation of the world's oceans for unhindered legitimate commerce by its citizens and its partners."\textsuperscript{48} The policy to repress piracy calls for the United States to "prevent pirate attacks and other criminal acts of violence against U.S. vessels, persons, and interests, to interrupt and terminate acts of piracy consistent with international law and the rights and responsibilities of coastal flag states," and, \textit{inter alia}, "to [p]reserve the freedom of the high seas, protect sea lines of communication, and reduce the vulnerability of the maritime domain when . . . U.S. interests are directly affected."\textsuperscript{49} The problem of piracy and unhindered maritime travel has taken on an international atmosphere of serious concern.

In General Assembly Resolution 61/222, all states were urged to cooperate with the IMO to combat piracy and armed robbery at sea.\textsuperscript{50} In Resolution 61/222, the General Assembly Report welcomed the progress in regional cooperation, including the Jakarta and Kuala Lumpur regional agreement to protect the straits of Malacca and Singapore, which was adopted in 2005.\textsuperscript{51} As a side

\textsuperscript{45} A Flag of Convenience is a flag of a certain state whose law renders it easy and attractive for vessels owned by foreign nationals to fly these flags. \textit{See id.} at 361.

\textsuperscript{46} President's Memorandum on Maritime Security (Piracy) Policy, 43 \textsc{Weekly Comp. Pres. Doc.} 24 (June 13, 2007).

\textsuperscript{47} \textit{Id.}

\textsuperscript{48} \textit{Id.}

\textsuperscript{49} \textit{Id.}


\textsuperscript{51} \textit{See Report of the Secretary-General A/62/66, supra} note 10, at 20.
note, the Resolution calls upon states which have not yet done so to become part of the “Protocol against Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children,” and to take appropriate measures to ensure the effective implementation of the protocol.”

Also, in paragraph seventy-one, the Resolution calls upon the states “to consider declining the granting of the right to fly their flag to new vessels, suspending their registry or not opening a registry, and calls upon flag and port States to take all measures consistent with international law necessary to prevent the operation of substandard vessels.” A discussion of the “genuine link” problem will be seen shortly.

In summary, General Assembly Resolution 61/222 has encouraged states to cooperate in addressing threats to maritime security through bilateral and multilateral instruments and mechanisms by monitoring, preventing and responding to such threats.

B. Examples of How People Are Affected by Crimes at Sea

The reader will recall that our scenario involves Afghani refugees who were rescued by the cruise ship. One of the main problems at sea regards the unprecedented number of people using maritime routes to cross international borders clandestinely. The General Assembly points out, for example, that during 2006, “more than 23,000 people arrived on the coast of Yemen from Somalia, with a considerable number having international protection needs. Approximately 35,481 people—triple the number since 2005—entered Spain, especially via the Canaries, during the first ten months.” The number of stowaways tripled with 244 incidents involving 667 stowaways. The problem with

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52 Id. at 25.
53 Id. at 13.
54 Defined in the United Nations Convention on the High Seas of 1958. Convention on the High Seas, art. 5, Apr. 29, 1958, 13 U.S.T. 2312 (“There must exist a genuine link between the State and the ship; in particular, the State must effectively exercise its jurisdiction and control in administrative, technical and social matters over ships flying its flag.”).
56 Id.
57 Id.
irregular migration in the Mediterranean needs to be addressed at the European level, but, although effective border control is considered necessary by many countries overall, it has been recognized that security and control measures alone will not eliminate irregular migration. "The General Assembly has, inter alia, requested States to adopt concrete measures to prevent the violation of human rights of migrants while in transit, including in ports and borders."

Another area of interest which will affect seafarers concerns abandonment of crew, by the ship, when in port. Abandonment occurs frequently enough to have spurred the creation of a database called "Abandonment of Seafarers," which was set up in 2005, and that is operated by the International Labor Organization (ILO). The database contained forty reported cases of abandonment that occurred between January 2004 and December 2006.

The definitions now used by reporting organizations include "robbery" separately from piracy. This distinction should have been unnecessary. The conventional and customary definition of piracy has always included the act of "violence;" robbery or not. The definition of "armed robbery" does not require at least two "private" ships (or aircraft) for "private ends" to be involved.

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58 Id. ¶ 74.
59 Id. ¶ 76.
60 Id.
66 See id.
It does not require that the piratical acts occur on the "high seas." It does not require that the piratical acts occur on the "high seas." It does not require that the piratical acts occur on the "high seas." In other words, the traditional definition of piracy adopted by the United Nations Convention on the Law of the Seas (UNCLOS) of 1982 has been expanded geographically by the IMO to include, for example, person(s) boarding a ship from a dock and committing armed robbery, etc., once on board.

1. Definitions Adopted by ReCAAP Information Sharing

The definitions of piracy and armed robbery adopted by the Information Sharing Centre (ISC) are in accordance with the ReCAAP agreement, wherein, piracy in accordance with Article 101 of UNCLOS is defined as:

(1) any illegal acts of violence or detention, or any act of depredation, committed for private ends by the crew or the passengers of a private ship or a private aircraft, and directed:
   (a) on the high seas, against another ship or persons or property on board such ship;
   (b) against a ship, persons or property in a place outside the jurisdiction of any State;

(2) any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft;

(3) any act of inciting or of intentionally facilitating an act described in subparagraph (a) or (b).

Armed robbery in accordance with the IMO's Code of Practice for the Investigation of the Crimes of Piracy and Armed Robbery against Ships, is defined as:

(1) any illegal act of violence or detention, or any act of depredation, committed for private ends and directed against a ship, or against persons or property on board such ship, in a place within a Contracting Party's jurisdiction over such offences;

67 Id.
68 See discussion infra Part II. D.
70 See e.g., ReCAAP Quarterly Report Jan-Sept 2007, supra note 63, at 3.
(2) any act of voluntary participation in the operation of a ship with knowledge of facts making it a ship for armed robbery against ships;

(3) any act of inciting or of intentionally facilitating an act described in subparagraphs (1) or (2). 71

As stated above, the expanded definitions of piracy and armed robbery are necessary in order to cover acts occurring while ships are berthed or anchored within the "territorial" waters of a state rather than on the "high seas." For example, between July and September, 2007, there were a total of twenty-nine incidents reported for the Asian area alone, eighteen of which occurred while the ships were at anchor, three while the ships were at berth, and eight while the ships were underway. 72 During this same time period and in the same geographical area, nearly every type of ship was attacked, including: general cargoes (five times); bulk carriers (five times); container ships (five times); chemical tankers (four times); and, even yachts (two times). 73

We have assumed thus far that the acts against our cruise ship were "piratical" in nature (with armed robbery being the motive); however, it could be just as likely that terrorists wished to seize the cruise ship. Under the traditional UNCLOS definition of piracy, acts of "terrorism" do not meet the "private ends" requirement. 74 For example, the Italian cruise ship Achille Lauro was taken over by Arab terrorists in October 1985. 75 The terrorists went on board the cruise ship while it was docked, thus not meeting the "two private ships (aircrafts)" requirement of UNCLOS. 76 There was no other conventional or customary international law covering the topic until the IMO Assembly adopted Resolution A.584(14). 77 As Professors Noyes and Sohn

71 Id.
72 Id. at 7.
73 Id. (listing the number of actual and attempted incidents to each type of ship).
74 See id. at 3.
76 Convention on the Law of the Sea, supra note 64 and accompanying text.
77 International Maritime Organization, Measures to Prevent Unlawful Acts which Threaten the Safety of Ships and the Security of Their Passengers and Crews, IMO Res. A.584(14) (Nov. 20, 1985) ("Recognizing the need for the Organization to assist in the formulation of internationally agreed technical measures to improve security and reduce the risk to the lives of passengers and crews on board ships.").
The IMO Assembly promptly adopted Resolution A.584(14) on "Measures to prevent unlawful acts which threaten the safety of ships and the security of their passengers and crews." This Resolution was supplemented by detailed guidelines prepared by IMO's Maritime Safety Committee, which dealt with preventive measures required to strengthen security in ports and on board ships, and to control access to vessels whether at sea or in port.78

Seizing control of a cruise ship would fall under Article 3 of the Convention.79 The Convention does not provide for universal jurisdiction as in the case of traditional acts of piracy; however, Article 6 authorizes a wide range of states to punish offenders:

1. Each State Party shall take such measures as may be necessary to establish its jurisdiction over the offences set forth in article 3 when the offence is committed:
   (a) against or on board ship flying the flag of the State at the time of the offence is committed; or
   (b) in the territory of that State, including its territorial sea; or
   (c) by a national of that State.
2. A State Party may also establish its jurisdiction over any such offence when:
   (a) it is committed by a stateless person whose habitual residence is in that State;
   (b) during its commission a national of the State

78 Louis B. Sohn & John E. Noyes, CASES AND MATERIALS ON THE LAW OF THE SEA 213 (Transnational Publications 2004) [hereinafter Sohn & Noyes] ("The IMO Council established an ad hoc Preparatory Committee, which prepared a comprehensive convention for the suppression of unlawful acts committed against the safety of maritime navigation that endanger human lives, jeopardize the safety of persons and property, and seriously affect the operation of maritime services, and thus are of grave concern to the international community as a whole. The convention drafted by the Committee parallels the 1970 Hague Convention for the Suppression of Unlawful Seizure of Aircraft and the 1971 Montreal Convention for the Suppression of Unlawful Acts Against the Safety of Civil Aviation. In addition, the Committee prepared a protocol to protect fixed platforms located on the continental shelf. With small changes, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts against the Safety of Fixed Platforms were approved on March 10, 1988, at a diplomatic conference held in Rome.").
79 Id.
is seized, threatened, injured or killed; or

(c) it is committed in an attempt to compel that State to do or abstain from doing any act.\textsuperscript{80}

The 1988 Convention and the Fixed Platform Protocol both entered into force on March 1, 1992. As of November 2003, ninety-seven states, representing 76.70\% of the world’s shipping tonnage, had accepted the Convention, and eighty-nine states, representing 76.46\% of tonnage, had accepted the Fixed Platforms Protocol.\textsuperscript{81}

The classical form of sea piracy has been expanded to include terrorism. We have both petty crime, committed by a few individuals, as well as organized crime attacking ships and selling their cargo. We have terrorism at sea and the many conventions covering these acts as well.\textsuperscript{82} This is a good example of how UNCLOS has been utilized as a framework or spring board to cover crimes that were unforeseen at the creation of this treaty.\textsuperscript{83} As the reader will observe, the acts of violence can cause extreme environmental damage, and they can take place in areas that are very important in commercial shipping navigation. The strategic importance of the Malacca and Singapore Straits to global economics cannot be underestimated. It is vitally important that a threat to international navigation in the region is actively challenged by littoral states and other states, as thirty percent of world trade and fifty percent of the world’s supplies pass through

\textsuperscript{80} Id. at 214 ("Furthermore, if any state party in whose territory the offender is found decides not to extradite that person to one of the states listed in Article 6(1)-(2), it has the duty to prosecute the alleged offender in the same manner as in the case of any other offense of a grave nature under the law of that state. Articles 5-15 of the Convention govern this 'extradite or prosecute' system. Notably, however, Article 9 of the Convention preserves traditional rules concerning jurisdiction to enforce with respect to foreign flag vessels: ‘Nothing in this Convention shall affect in any way the rules of international law pertaining to the competence of States to exercise investigative or enforcement jurisdiction on board ships not flying their flag.’").

\textsuperscript{81} Id.


\textsuperscript{83} See Halberstam, supra note 82, at 276.
this congested water way.\textsuperscript{84}

Our scenario also mentions that there are persons on board the cruise ship who may be victims of a crime that can occur at sea; namely, human trafficking.

\section*{C. Human Smuggling Operations}

Human smuggling operations, very similar to what we called "slavery"\textsuperscript{85} in the past, have increased dramatically over the years.\textsuperscript{86} Approximately 600,000 to 800,000 persons are trafficked annually across international borders for the primary purpose of commercial sexual exploitation and forced labor.\textsuperscript{87} The 2000 U.N. Convention Against Transnational Organized Crime’s Protocol Against the Smuggling of Migrants by Land, Sea and Air is the primary international instrument addressing human smuggling.\textsuperscript{88} Section II, Article 8 of the Protocol enables a flag state to authorize another state to board and search vessels suspected of smuggling migrants.\textsuperscript{89} Prior to this Convention, UNCLOS (1992) contained a “right to visit” provision allowing warships that encountered foreign ships on the open seas (except other warships) to stop and board such vessels (called “right of visit”—Article 110) if it was suspected that the ship was engaged in piracy, slave trade, etc.:

1. Except where acts of interference derive from powers conferred by treaty, a warship encounters on the high seas a foreign ship, other than a ship entitled to complete immunity in accordance with articles 95 and 96, is not justified in boarding it unless there is


\textsuperscript{85} U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 6 (2005) [hereinafter TIP REPORT 2005] (“[A] modern form of human slavery has emerged as a growing global threat to the lives and freedom of millions of men, women, and children.”).

\textsuperscript{86} See ANTI-SLAVERY INTERNATIONAL, THE MIGRATION-TAFFICKING NEXUS: COMBATING TRAFFICKING THROUGH THE PROTECTION OF MIGRANTS’ HUMAN RIGHTS 4-5 (2003) [hereinafter MIGRANT-TAFFICKING NEXUS 2003] (“It is no coincidence that the growth in trafficking has taken place during a period where there has been an increasing international demand for migrant workers.”).

\textsuperscript{87} TIP REPORT 2005, supra note 85, at 6.


\textsuperscript{89} Id. at 43.
reasonable ground for suspecting that:

(a) the ship is engaged in piracy;
(b) the ship is engaged in the slave trade;
(c) the ship is engaged in unauthorized broadcasting and the flag State of the warship has jurisdiction under Article 109;
(d) the ship is without nationality, or
(e) though flying a foreign flag or refusing to show its flag, the ship is, in reality of the same nationality as the warship.

2. In the cases provided for in paragraph 1, the warship may proceed to verify the ship’s right to fly its flag. To this end, it may send a boat under the command of an officer to the suspected ship. If suspicion remains after the documents have been checked, it may proceed to a further examination on board the ship, which must be carried out with all possible consideration.

3. If the suspicions prove to be unfounded, and provided that the ship boarded has not committed an act justifying them, it shall be compensated for any loss or damage that may have been sustained.

4. These provisions apply mutatis mutandis to military aircraft.

5. These provisions also apply to any other duly authorized ships or aircraft clearly marked and identifiable as being on government service."90

The reader will observe that smuggling is considered to be different from slavery. This point will be discussed later.91

D. Terrorism vs. Piracy

Terrorism is in a separate category from piracy. An act of piracy is defined in the UNCLOS as “any illegal act of violence or detention or any act of depredation committed for private ends by the crew or the passengers of a private ship or a private aircraft and directed on the high seas against another private ship . . . .92

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90 Convention on the Law of the Sea, supra note 64, art. 110.
91 See infra pp. 150-52.
In other words, there has to be an act of violence by one private vessel against another private vessel on the high seas.93 "Terrorism" is usually done for political reasons; "piracy" is committed by organized criminals or petty thieves.94 Yet in the past, authors have written about how this definition is somewhat limited to classical types of piracy.95 "Terrorism," on the other hand, can occur where one or more persons board a cruise ship (as occurred in the Achille Lauro situation), seize control of the ship and carry on acts of violence such as threatening to blow up, or by actually blowing up the ship.96 The difference, of course, between piracy and terrorism at this point is that terrorism does not require one ship to attack another ship. Therefore, it was necessary to build upon the framework of UNCLOS.

In response to the Achille Lauro incident which occurred in 1985, a proposal was issued for IMO to call an international conference for the purpose of drafting a convention dealing with maritime terrorism.97 Eventually, the Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation (SUA) and its 2005 Protocol were prepared.98 Basically, the SUA in the 2005 Protocol99 "enumerates additional offenses not found in the earlier versions of the SUA treaties."100 It states that it is an offense, within the meaning of the convention, if a person unlawfully and intentionally acts, inter alia "to intimidate a population, or to compel a government or an international organization to do or to abstain from any acts."101 It is a very general protocol and covers just about everything other than

93 Id.
95 See id. at 13 (“After looking at certain norms of international law with regard to the law of internal and territorial waters, straits and environmental standards, it will be obvious why certain treaty provisions will be ineffective against acts of piracy occurring in the waters of coastal states”).
96 See Harrington, supra note 82, at 118.
97 Id.
98 See id. at 119-20.
99 The 2005 Draft Protocol was initiated in response to the terrorists attacks of Sept. 11, 2001 to further prevent maritime terrorism. Id.
101 Id. at 634-35.
The evolution of crimes at sea.

As a result, cruise ships may carry "flags of convenience" in order to avoid certain enforcement of these laws.103

E. Crimes of Omission—Implementation and Enforcement by Flag States

One of the major problems at sea may involve acts of omission by flagged vessels. It is very easy to flag a vessel with what is known as a "flag of convenience."104 It is very difficult, however, to get some of these countries to comply with any of the treaty laws that are currently in effect.105 This lack of enforcement can lead to a relaxation of standards of care aboard vessels. Should these omissions be considered commissions of crimes at sea?

The General Assembly Annual Report on the Status of Law of the Sea discusses the problem of flag State implementation in connection with the enforcement of the treaties.106 "In its report (A/61/160, Annex), the Ad Hoc Consultative Meeting of senior representatives of international organizations on the 'genuine link' underlined the need for ongoing compliance with international regulations wherever a ship is operating, irrespective of registry or flag, and the importance of developing a 'compliance culture.'"107 It stated that regarding, "possible measures to counteract non-compliance, the Council noted that suspension of registration could be counterproductive and lead to re-registration with countries not properly fulfilling the 'genuine link' requirements in UNCLOS."108 Moreover, "[t]he General Assembly, in its Resolution 61/222, took note of the report of the Ad Hoc Consultative Meeting... [and] also welcomed the Voluntary IMO Member State Audit Scheme, which allows flag States to assess

102 See id. at 633-37 (“The main purpose of SUA is to ensure that appropriate action is taken against persons committing unlawful acts against ships.”).
103 See id. at 590 (“[A]s a general principle of law, a vessel in international waters is subject only to the jurisdiction of the state under which it is flagged.”).
104 See id. at 660-61 (stating that nations such as Belize, Croatia, Cyprus, Liberia, Marshall Islands, and Panama are considered flag of convenience states “due to their relatively lax vessel registration requirements.”).
105 See, e.g., id. at 633 (stating that the Provisions of the Convention for the Suppression of Unlawful Acts Against the Safety of Maritime Navigation (SUA) were created “to ensure that appropriate action is taken against persons committing unlawful acts against ships.”).
107 Id.
108 Id.
how effectively they implement and enforce relevant IMO Convention standards . . . ."109 The General Assembly also encouraged all flag States to volunteer to be audited, and, by October 2006, 24 states had done so.110 Four audits commenced before September 2006.111 The shipping industry set forth a performance table of compliance which showed that eighteen flag States did not meet all the required criteria.112 For example, these flag States were frequently detained; did not meet IMO and ILO standards; and, were not interested in complying with the International Convention on Standards of Training, Certification, and Watch Keeping for Seafarers.113 In fact, there were numerous flag States that have twelve or more "negative performance indicators;" Albania, Bolivia, Cambodia, and Costa Rica.114 The type of criteria for the treaties that are not being either ratified or followed include: the International Convention for the Safety of Life at Sea, 1974 as amended (SOLAS 74), including the 1988 Protocol and the International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol in 1978 (MARPOL 73/78). Concerning the matter of implementation and lack of "genuine link" and non-recognition of the vessel nationality, Professors Sohn and Noyes stated: "If a Flag State lacks a genuine link with a ship flying its flag, should another state be entitled to refuse to recognize the ship as a national of the Flag State?"115 The U.S. Senate Committee on Foreign Relations in commenting on Article 5(1) of the 1958 High Seas Convention (predecessor to UNCLOS) stated:

The International Law Commission did not decide upon a definition of the term "genuine link." This article as originally drafted by the Commission would have authorized other states to determine whether there was a "genuine link" between a ship and the flag state for purposes of recognition of the nationality of the ship . . . . By a vote of 30 states, including the United States, against, 15 states for, and 17 states abstaining,
the provision was eliminated which would have enabled states other than the flag state to withhold recognition of the national character of a ship if they considered that there was no "genuine link" between the state and the ship. Thus, under the Convention on the High Seas, it is for each state to determine how it shall exercise jurisdiction and control in administrative, technical and social matters over ships flying its flag. 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; that is, no state can claim the right to determine unilaterally that no genuine link exists between a ship and the flag state. Nevertheless, there is a possibility that a state, with respect to a particular ship, may assert before an agreed tribunal, such as the International Court of Justice, that no genuine link exists. In such event, it would be for the Court to decide whether or not a "genuine link" existed.116

In addition, Professor David P. Caron states that:
[T]he genuine link requirement is a classic example of 'soft law.' The normative content of the requirement is soft in that the terms involved are vague and subject to widely varying interpretation. The enforceability of the requirement is soft in that a State may not refuse to recognize the nationality of a vessel because of a dubious link between the ship and the flag State.117

It should be noted by the reader that there is no discussion of what happens if a ship refuses to pick up stranded seamen or passengers on the high seas. The salvage of a human being at sea has had a long and unfortunate history leading to the erroneous and egregious conclusion that cargo has always been worth more than human beings. In the past, cargo was salvageable which meant that the master and crew would share monies as a result of

116 Id.
117 Id.; see also infra note 164 and accompanying text.
cargo recovery whereas the recovery of human beings did not present the same monetary reward, if any.

Having set forth the primary problems at sea as background material to our scenario, it is also important for the reader to understand some very basic jurisdictional questions regarding the solvency of nations on the sea. This article includes a schematic jurisdictional diagram which has been drawn for the purpose of this analysis.

F. A Brief Analysis of Jurisdiction at Sea

Having set forth the primary problems at sea as background material to our scenario, it is also important for the reader to understand some basic jurisdictional questions regarding the solvency of nations on the sea.

The coastal state exercises the utmost jurisdiction over its land territory. Every coastal state has a baseline which is used to measure the state's diminishing jurisdiction as one moves seaward. The coastal state exercises exclusive jurisdiction over its ports and harbors (with possible access to visiting ships). As one moves seaward from the baseline, the state exercises almost total jurisdiction over its territorial sea (except for the doctrine of innocent passage) which is measured twelve miles seaward from its baseline. The state's jurisdiction diminishes further when the contiguous zone, which extends for twelve miles beyond the territorial waters, reaches the high seas. The contiguous zone is an area of limited jurisdiction of the coastal state (e.g., navigation, sanitation, customs, fiscal) and is actually part of the high seas. The high seas are open to all nations and therefore the coastal state is not allowed to exercise its jurisdiction in this area (with limited exceptions, e.g., the exclusive economic zone). The high seas have been traditionally open to all nations for the purpose of preserving international shipping and commerce. International straits are also preserved for international commerce and are therefore open to all nations. The flow of international commerce is at the heart of all major maritime conventions and
concerns regarding [piracy, terrorism and other] maritime violence. Commerce must be able to flow freely, uninhibited, without danger to life and limb and without the fear of loss to human life or of widespread environmental contamination.\textsuperscript{118}

We have reviewed the major crimes occurring in our oceans (many of which affect the flow of shipping through the international channels of commerce throughout the world) relevant to this article. Against this background, it is now necessary to review and highlight some of the pertinent statistics in the cruise line industry before putting together all of the information that we have gleaned so far in this article to attack the problems in the scenario.

III. An Overview of the Cruise Industry and Its Relationship with the Passengers

\textit{A. The Passengers}

One of the main reasons for discussing some of the over abundance of treaty laws concerning crimes at sea was to contrast this situation with the lack of treaty laws concerning cruise ships. In order to see the extent of the problem regarding coverage, in general, it is necessary to understand why one should be concerned about medical coverage on board a cruise ship.

The cruise industry is in good health according to a forecast issued by the Cruise Lines International Association (CLIA).\textsuperscript{119} The industry projected a formidable growth with 12.62 million cruise passengers predicted to sail have sailed in 2007.\textsuperscript{120} In fact, the industry seems to be booming as there is a forecast of an increase of 500,000 passengers which represent a 4.1% annual growth commensurate with the planned net increase in 2007 CLIA-member of line capacity.\textsuperscript{121} In the year 2006, for example, CLIA-member cruise lines carried 12.12 million passengers worldwide. This was an 8.4% increase over the 11.18 million they

\textsuperscript{118} Diaz & Dubner, supra note 94, at 13-14.


\textsuperscript{120} \textit{Id.}

\textsuperscript{121} \textit{Id.}
carried in 2005.122 The CLIA-member lines carried 10.8 million North Americans in 2006 compared with 9.67 million in 2005.123 There was an occupancy factor of 104% in 2006.124 There was an introduction of twelve new ships totaling 22,039 beds as well.125 There was an increase in ship capacity which apparently led to a steady growth of available beds from 227,837 in 2005 to 246,759 in 2006.126 The CLIA-member lines invested more than $15 billion in thirty new vessels that were to enter into force between 2007 and the end of 2010 which represents 73,562 more beds – a 29.88% increase from 2006.127 But can this vivacious boost in the industry truly handle the passengers’ needs in every respect, specifically, medical requirements? Does this growth accurately depict that all things are rosy in the cruise industry? If this growth spurt, as it obviously would, includes the global community, then it stands to reason that medical issues inherent when diverse cultures congregate will become an increasing problem.128

There are multiple reasons why the medical issues would escalate as the industry grows. Cruise ships by their very nature carry passengers from all over the world. These passengers bring with them diverse medical profiles, including but not limited to: immunization history and laws, sanitation standards, as well as different cultural practices and mores concerning cleanliness.129 For example, a passenger from the Midwest of the United States has likely had immunizations for the major childhood diseases that a passenger from a less affluent continent has not received.

These are but a few of the potential sources for problems that exist with respect to medical health and care aboard the ships. Not all ships come equipped with x-ray equipment and the nearest hospital may not only be miles away, but also only accessible by helicopter. And while personal health is paramount to the individual (who among us wants to be sick on vacation?), a

122 Id.
123 Id.
124 Karantzavelou, supra note 119.
125 Id.
126 Id.
127 Id.
129 Id.
broader concern also exists: passengers aboard these ships could be the conduit for the spread of communicable diseases to other countries, potentially launching a global health crisis. And, this is not limited to passengers, but also includes the crew.

Let us examine the following list that outlines the types of on board accidents that can occur on a cruise ship, including death and physical injuries caused by:

(1) slips, trips and falls; (2) disappearances; (3) drowning and pool accidents; (4) flying coconuts; (5) stray golf balls; (6) discharged shotgun shells and cannons; (7) food poisoning; (8) gastrointestinal disorders, seasickness and fear; (9) pirates; (10) rogue waves; (11) listing; (12) defective exercise equipment; (13) diseases such as Legionnaire’s disease and respiratory infections; (14) rapes and sexual assaults; (15) fires; (16) falling bunk beds; (17) pool jumping; (18) storms and hurricanes; (19) spider bites; (20) torture and hostage taking; (21) malpractice by the ship’s doctor.\textsuperscript{130}

In addition to on board accidents, illness outbreaks on cruise ships are fairly prevalent. Rather than speaking in generalities, the following is a list of the types of illnesses occurring on cruise ships and the number of people, passengers and crew that became ill in both 2006 and 2007 including the total summary of illness outbreaks from 2002-2006.\textsuperscript{131} In addition, if one wishes to see how often it occurs on certain cruise ships, there are statistics for that available but that is not the purpose of this article.\textsuperscript{132}


ILLNESS OUTBREAKS ON CRUISE SHIPS

<table>
<thead>
<tr>
<th>Illness:</th>
<th>2006 Box Score</th>
<th>2007 Box Score</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td># of Reports</td>
<td># of Reports</td>
</tr>
<tr>
<td>Gastrointestinal (including Noro Virus)</td>
<td>53</td>
<td>33</td>
</tr>
<tr>
<td>E coli</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Salmonella</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Shigella</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other</td>
<td>1</td>
<td>7</td>
</tr>
<tr>
<td>Total</td>
<td>54</td>
<td>34</td>
</tr>
</tbody>
</table>

NOTE: Box Score includes outbreaks confirmed by the CDC or those reported by multiple sources with reliable numbers. Estimates given by passengers are generally not included in the table.

Utilizing examples of illness on ships, your authors have included two examples of: (a) a descriptive epidemiological study of injury and illness among passengers and crew; and (b) an example of the numbers and types of illnesses on board a cruise ship in the Antarctic.

(a) Medical Practice During a World Cruise: A Descriptive Epidemiological Study of Injury and Illness Among Passengers and Crew

OBJECTIVE:
To describe the medical practice of one physician and two nurses during a 106-day westward cruise from Los Angeles to New York in 2004 with an
average of 464 passengers (51% women) and 615 crew members (22% women) aboard.

**METHODS:**
Patient data were registered continuously and reviewed after the voyage.

**RESULTS:**
There were 4244 recorded patient contacts (=40 per day), 2866 of which directly involved the doctor (=27 per day). Passengers accounted for 59% of the doctor consultations, while crew accounted for 59% of the nurse consultations. The most frequent consultation cause was respiratory illness (19%) in passengers and skin disorders (27%) in crew. Among 101 reported injuries (56 passengers, 45 crew) wound was the most common type (passengers 41%, crew 40%). The most frequent accident location for passengers was ashore (27%) and for crew galleys aboard (31%). 133 crew were on sick leave for a total of 271 days, and seven were medically signed off, six of them following injuries. Seven passengers and 13 crew were referred to dentists ashore, five passengers and two crew were referred to medical specialists ashore and returned to the ship, while seven passengers and one crew were hospitalized in port.

**CONCLUSION:**
The medical staff on long voyages will have a busy general practice. Broad experience in emergency and general medicine, good communication skills and previous cruise experience are useful qualifications. While the ACEP PREP may be sufficient for shorter cruises, additional equipment is recommended for long voyages.\(^{133}\)


(b) Injury and Illness Aboard an Antarctic Cruise
Ship

OBJECTIVE:
The objective of this study was to determine the incidence and pattern of injury and illness among passengers aboard a cruise ship in Antarctica.

METHODS:
Demographic data on passengers were collected for all participants aboard Antarctica cruises on a single ship during the Antarctic summer cruise season of November 2004 through March 2005. Medical logs from each of 11 cruise trips were reviewed for presentation of injuries and illnesses.

RESULTS:
A total of 1057 passengers were included in the study, of which 47.4% were male. The mean age of passengers was 54 years (+16.5 years). The overall incidence rate of injury and illness was 21.7 per 1000 person-days. Motion sickness was the most common condition, comprising 42.3% of all medical encounters by the ship physician, followed by infectious diseases (17.2%) and injury (15.0%). The incidence rate of injury increased significantly with age, whereas the incidence rate of motion sickness decreased significantly with age. There was little variation in the incidence and patterns of injury and illness between genders.

CONCLUSION:
Most illnesses and injuries were due to the motion of the ship, and a large proportion of the passengers aboard the cruise ship in Antarctica were elderly. Injury among older passengers is of special concern.134

You will observe that most illnesses and injuries were due to the motion of the ship and that a large proportion of the passengers

aboard this particular cruise ship in the Antarctic were elderly.\textsuperscript{135} The report also indicates that injury among older passengers is of special concern.\textsuperscript{136}

American senior citizens who are on Medicare and/or Medicaid should be especially aware of problems onboard cruise ships regarding their medical coverage. According to 42 C.F.R. § 411.9, the basic rule is that the Medicare does not pay for services furnished outside the United States.\textsuperscript{137} After defining the United States, section 411.9(a)(2) states the following:

services furnished onboard ship are considered to have been furnished in the United States territorial waters if they were furnished while the ship was in a port of one of the jurisdictions listed in paragraph (a)(1) of the section, or within six hours before arrival at, or six hours after departure from such a port.\textsuperscript{138}

It is interesting to note that prior to the six-hour rule, (the background of the section 405.313 based on section 1862(a)(4) of the Act) there existed a “same day” rule that ship port services furnished in a U.S. port (or around the port the ship arrived at or departed from), were considered as furnished in U.S. territorial waters.\textsuperscript{139} However, the definition of “United States” needed to be expanded to include the Northern Mariana Islands.\textsuperscript{140} In addition, the “same day” rule was too vague and too broad to be satisfactory.\textsuperscript{141} That could result in claims for services furnished in a foreign port (for example, in the Bahamas) that was less than twenty-four hour sailing distance from the U.S. port. Taking this six hour rule into consideration, the bottom line is that it is extremely important that senior citizens obtain special insurance to make certain that their insurance covers their stay aboard the cruise ship as well as any disembarkation from the cruise ship to other areas outside the United States, as defined in the statute. This has nothing to do with the health standard for passengers onboard ship other than the fact that health standards have not

\textsuperscript{135} See id.
\textsuperscript{136} See id.
\textsuperscript{137} 42 C.F.R. § 411.9(a) (2006).
\textsuperscript{138} 42 C.F.R. § 411.9(a)(2) (2006).
\textsuperscript{139} Medicare as Secondary Payer and Medicare Recovery Against Third Parties, 54 Fed. Reg. 41716, (Oct. 11, 1989) (citing "section 405.313 of the previous rules based on section 1862(a)(4) of the Act").
\textsuperscript{140} Id.
\textsuperscript{141} Id.
been very high in the past, making it all the more important that passengers who rely on Medicare or Medicaid, get extra insurance in order to cover the entire trip, including the cruise ship.

One can say that there are “no enforceable international standards when it comes to . . . healthcare facilities for passengers.” Historically, the inadequacy of medical care aboard ships was noted in a 1996 ship surveyed by Feuer and Prager. Their findings were rather shocking and are set forth, as follows:

(1) 27% of doctors were not certified in advanced cardiac life support; (2) 27% of nurses were not certified in advanced cardiac life support; (3) 54% of doctors were not certified in advanced trauma life support; (5) 72% of the surveyed ships did not have a floor-mounted X-ray machine; (6) 45% of the surveyed ships had no mechanical ventilators for patient support in case of respiratory or cardiac arrest; (7) 63% of ships surveyed had no oxygen oximeters; (8) 9% of ships surveyed had no electrocardiographic (EKG) equipment; (9) 45% of the surveyed ships had no external cardiac pacemakers; (10) 63% of the surveyed ships had no laboratory facilities for blood tests needed to diagnose heart attacks; (11) 36% the ships surveyed had no thrombolytic agents used in treating heart attacks or strokes; (12) there was a general lack of quality-assurance checks to ensure that all medical equipment and devises were in working order; (13) 36% of ships did not have a system in place for nurse or physicians peer review; (14) 18% of nurses had no credentials in critical care or emergency care; (15) 45% of doctors were not board certified in their areas of practice; (16) 36% of cruise lines had no shoreside medical departments for support; and (17) a lack of onboard emergency medical equipment and laboratory facilities. The Feuer and Prager survey results are not

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atypical.\textsuperscript{143}

In order to bring this information up to date, one must look at the current standards. "Unfortunately, there are no uniform standards for the qualifications of a ship's doctors or nurses or for the nature and quality of the medical equipment on board the cruise ship."\textsuperscript{144}

The most surprising fact that passengers will find today is that there are no international standards for medical care on passenger cruise ships.\textsuperscript{145} In fact there is not even a standard that requires a physician to be onboard at all times.\textsuperscript{146} There is no treaty or customary law involving medical care on cruise ships.\textsuperscript{147} Although most cruise ships do carry doctors, many of them are not trained in the United States or licensed to practice medicine in the United States.\textsuperscript{148} This is not to imply that they have substandard training but it is important to understand that a potential customer/patient going on a cruise should still be wary. There is no international agency regulating the informative facilities or equipment.\textsuperscript{149} There is no standard of training for cruise ship doctors.\textsuperscript{150}

Notwithstanding these facts, the reader is not to be left with the impression that the standard is a complete free for all. There is a standard of care imposed which equates to that of the average

\textsuperscript{143} Thomas A. Gionis, \textit{Paradox on the High Seas: Evasive Standards of Medical Care—Duty without Standards of Care: A Call for the International Regulation of Maritime Healthcare Aboard Ships}, 34 J. MARSHALL L. REV. 751, 754-758 (2001). This data and corresponding analysis were heavily scrutinized in \textit{Medicine on the Seas}. See also Robert D. Peltz & Vincent J. Warger, \textit{Medicine on the Seas}, 27 TUL. MAR. L.J. 425 (2003). According to these authors, the numbers may not be entirely reflective of the last decade. \textit{Id.} at 426. Additionally, the authors cite to some factors that should have been considered. For example, they very strongly try to get across that American doctors are not the only "qualified" doctors, and hence lack of American doctors aboard ships is not akin to lack of adequate medical care. \textit{Id.} at 427. Also, they make the point that board certification is not a prerequisite to practicing medicine in the States, and likewise not an indicator of the standard of care rendered by a physician opting not to be board certified. \textit{Id.} Additionally, the point was made that ship doctors must be conversant in many divergent types of illnesses, amongst passengers who range from very young to very elderly. \textit{Id.} at 428. This takes a very special type of physician, and one that has developed skills adequate to undertake many types of calamities that may occur while on board. \textit{Id.}


\textsuperscript{145} \textit{Id.}

\textsuperscript{146} \textit{Id.}

\textsuperscript{147} \textit{Id.} at 473.

\textsuperscript{148} \textit{Id.} at 472-73. \textit{But see} Peltz & Warger, \textit{supra} note 143 (discussing doctors who are not Americans or trained in America).

\textsuperscript{149} \textit{Id.} at 473.

\textsuperscript{150} \textit{Id.}
qualified practitioner of the art and science of medicine.\textsuperscript{151} However, enforcing this standard is made more difficult due to the uniqueness of illness/injury on a ship. The trier of fact must evaluate certain factors, including but not limited to: "whether the ship was at sea or in port[,] and, if in port, what medical facilities were available, and, if such facilities were obviously extremely limited or inadequate, what means were reasonably obtainable to transfer the seaman to the nearest adequate medical facility."\textsuperscript{152}

For senior citizens onboard our cruise ship in our scenario, it is important to re-emphasize that the general foreign exclusion covers services received on board a ship in limited circumstances.\textsuperscript{153} Specifically, "[s]hipboard services must be provided within U.S. territorial waters, which means the ship was either in a U.S. port, or within six hours of arriving at or departing from a U.S. port."\textsuperscript{154} The ship also must be of American registry.\textsuperscript{155} Although, not expressly stated, "this rule presumably applies to airplanes as well, but a plane is no longer considered within the United States once it departs U.S. air space (i.e., is not above the land area of the United States)."\textsuperscript{156}

No international standards exists as of the writing of this article regarding the healthcare or healthcare facilities for passengers. It is true WHO, IMO, and the International Maritime Health Association (IMHA) all mention passenger health and safety but none of them has set forth separate standards for medical facilities. The member vessels that belong to the CLIA have met the American College of Emergency Physician Healthcare guidelines on cruise ships which were established in 2000. Today, ship infirmaries "should be able to provide blood chemistries, urine analyses, chest x-rays, among other services according to the ACEP guidelines . . . more serious case[s] like heart attacks and strokes would require that either the ship proceed to the nearest port or airlift the patient from the ship."\textsuperscript{157} There are

\textsuperscript{151} Peltz & Warger, supra note 143, at 433.
\textsuperscript{152} Id.
\textsuperscript{153} James R. Whitman, Venturing Out Beyond the Great Wall of Medicare: A Proposal to Provide Medicare Coverage Outside the United States, 8 ELDER L.J. 181, 197 (2000).
\textsuperscript{154} Id.
\textsuperscript{155} Id.
\textsuperscript{156} Id.
\textsuperscript{157} Wolgamuth, supra note 128, at 13 (citing CDC Health Information, supra note 128).
guidelines found elsewhere but they are all voluntary.\textsuperscript{158} Also, the guidelines only speak to the level of the facility and not to the competence of the doctor providing the care although the cruise industry does not make such distinction.\textsuperscript{159} Some cruise ships today have "telemedicine" especially in the newer vessels and two-way video links that can be transmitted by satellite to a hospital from a ship anywhere in the world.\textsuperscript{160} If the ship is of U.S. registry, the U.S. Coast Guard has a certification process that requires a ship's doctors on U.S. flag vessels be licensed to practice medicine in the United States and to have met the Coast Guard certification requirement.\textsuperscript{161}

In order to avoid this and other regulations health and welfare of the crew, "cruise lines routinely do not register their vessels in the U.S., opting instead for countries that offer "open registry," otherwise known as "flags of convenience."\textsuperscript{162} Specifically, "[t]he predominant flags for cruise vessels are the United Kingdom, Panama, Norway, Netherlands, Bahamas and the United States."\textsuperscript{163} When asked about flying flags of convenience without necessarily any genuine link, which, in itself, as mentioned earlier is "soft law," the CLIA states the following:

[B]ecause of . . . restrictions [regarding the] U.S. flag registry, "nearly 90% of the commercial vessels calling on U.S. ports fly a non-U.S. flag. Therefore[,] vessels operating with international registries are not unique to the cruise industry. A majority of the major U.S. controlled shipping companies engaged in international commerce have chosen to operate under flags other than that of the United States."\textsuperscript{164}

The owners who are seeking to flag ships in countries like the Bahamas, Panama or other such countries may not be interested in

\textsuperscript{158} Id. See CDC Health Information, supra note 128 (observing that smaller ships or ships that are independently operated may fail to have adequate medical provisions onboard.)
\textsuperscript{159} Id. at 14.
\textsuperscript{160} Id. at 14 (quoting Cruise Lines International Association, Medical Facilities Guidelines (2008), http://www.cruising.org/industry/medical_facilities.cfm).
\textsuperscript{161} Id. at 2.
\textsuperscript{162} Wolgamuth, supra note 142, at 2 (citing CDC Health Information, supra note 157, at 502).
\textsuperscript{163} Id. at 9 (citing Cruise Lines International Association (CLIA), Background – Maritime Industry, available at http://www.cruising.org/industry/maritime_industry.cfm [hereinafter CLIA]).
\textsuperscript{164} Id. at 9 (citing CLIA, supra note 160).
providing safe working conditions, or ensuring a high standard of care for physicians. The flag State has to provide: (1) comprehensive maritime expertise; (2) administrative services; (3) annual safety inspections (before issuing a passenger vessel certificate); and (4) compliance with international maritime laws and the laws of the flag State.

There are some U.S. regulations of cruise ships docked at U.S. ports as the U.S. Coast Guard is assigned the task of enforcing maritime safety requirements, but only the regulations that extend to vessel safety. As a condition of permitting cruise lines to service passengers at U.S. ports, "the U.S. Coast Guard requires the ships to meet the International Convention for the Safety of the Life at Sea (SOLAS)." However, medical care services are not covered by these coastguard regulations or by SOLAS because the regulations themselves are focused on requirements for safe navigation and design of the cruise ship. They do not concern themselves with medical care aboard the ship. Aside from the Coast Guard, the Center for Disease Control (CDC) has regulatory responsibilities for sanitation and public health on cruise ships bound to the United States from a foreign port. This is handled through the Vessel Sanitation Program (VSP) and through U.S. Federal Quarantine Regulations.

The conclusion is that the cruise industry is largely self-regulating.

Our scenario concerns persons who have jumped into the ocean to avoid the pirates. Is there any duty in international law to render assistance to these people? Historically, salvage will only cover cargo, not persons. While it might be considered immoral to let people drown, ships did not get rewarded for saving people, only cargo. Over the years, this doctrine has changed gradually. Today, two distinct problems exist. The first problem concerns the

165 Id. at 9-10.
166 Id. at 10 (quoting CDC Health Information, supra note 128, at 502).
168 Id. at 11.
169 Id. (citing USCG Fact Sheet, supra note 167).
170 Id. (citing CDC Health Information, supra note 157, at 502).
171 Id. at 11-12 (citing CDC Health Information, supra note 157, at 503).
172 See Arthur Alan Severance, The Duty to Render Assistance in the Satellite Age, 36 CAL. W. INT'L L.J. 377, 380 (2006) (stating that the Salvage Convention of 1910 and even subsequent legislation passed in 1912 "denied salvage rewards to mariners who saved life but not property unless another salver rescued the property").
173 Id.
duty to render assistance to persons in distress on the seas which, as will be shown, is a legal obligation under international law. However, it is unclear how the same duty applies when those who are rescued are refugees and/or asylum seekers.

B. The People Who Fell into the Water

We start with our framework, UNCLOS (1982):

Article 98, Duty to render assistance
1. Every State shall require the master of a ship flying its flag, insofar as he can do so without serious danger to the ship, the crew or the passengers:
   (a) to render assistance to any person found at sea in danger of being lost;
   (b) to proceed with all possible speed to the rescue of persons in distress, if informed of their need of assistance, insofar as much action may reasonably be expected of him;
   (c) after a collision, to render assistance to the other ship, its crew and its passengers and, where possible, to inform the other ship of the name of his own ship, its port of registry and the nearest port at which it will call.
2. Every coastal State shall promote the establishment, operation and maintenance of an adequate and effective search and rescue service regarding safety on and over the sea and, where circumstances so require, by way of mutual regional arrangements cooperate with neighboring States for this purpose.

In Article 98, UNCLOS sets forth a provision that the signatory States for the treaty shall require the ship’s master, flying its flag, to render assistance to any person found at sea. The reader will immediately notice that there is no criminal liability for failure to do so. Nevertheless, the moral obligation of rescue was placed into an international article with the consensus of the international community. Prior to UNCLOS, the 1958 Convention on the High Seas (part of the Geneva

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175 Id.
176 Id.
177 See id.
Convention on the Law of the Sea, 1958) had a similar article; (12(1)). Article 11 of the International Salvage Treaty of 1910 also established a duty to render assistance to those in distress at sea. Article 11 states that:

Every master is bound, so far as he can do so without serious danger to his vessel, her crew and passengers, to render assistance to everybody, even though an enemy, found at sea in danger of being lost. The owner of the vessel incurs no liability by reason of contravention of the foregoing provision.

Article 10 of the Salvage Convention of 1989 updated the International Salvage Treaty of 1910, restating the obligation for a master of a ship to "render assistance to any person in danger of being lost at sea." Both the 1974 Safety of Life at Sea Convention (SOLAS) and the 1979 Maritime Search and Rescue Convention (SAR) were created under the International Maritime Organization (IMO). The IMO is charged with certain duties, inter alia: of organizing and facilitating cooperation between Nations regarding efficient international shipping as well as safety and security concerns, maritime legal matters, and technological cooperation. As pertinent to this article, the IMO is responsible for promoting safety of life at sea, protecting maritime life, and environmental concerns. The Safety and Rescue Convention (SAR) of 1979 went into effect in 1985. It "provides a comprehensive international system for the creation and development of search and rescue operations." The SAR


179 Id. at 2 (citing Convention for the Unification of Certain Rules With Respect to Assistance and Salvage at Sea, art. 11, Sept. 23, 1910, 37 Stat. 1658 [hereinafter Salvage Convention of 1910]).

180 Salvage Convention of 1910, supra note 179, art. 11.


182 Id. at 3.

183 Id. at 3-4. (citing INTERNATIONAL MARITIME ORGANIZATION, Introduction to IMO (2002), http://www.imo.org/).

184 Id. at 4.


186 Id. (citing Jessica E. Tauman, Rescued at Sea, But Nowhere to Go: The Cloudy Legal Waters of the Tampa Crisis, 11 PAC. RIM L. & POL’Y J. 461, 470 (2002) [hereinafter Tauman]).
Convention recommends that each State involved in search and rescue operations with neighboring States should allow other rescuing parties from States to enter into their territory to search for casualties and to rescue survivors. The SAR Convention has a specific definition of the word "rescue" which requires "an operation to rescue persons in distress, provide for their initial medical and other needs" and also "deliver them to a place of safety." In addition, "[t]his obligation to initiate action is activated once the responsible authorities of a State Party receive information that any person is, or appears to be, in distress at sea." It further states, that

once a State Party has accepted responsibility to provide search and rescue services for a specified area, it is obliged to use search and rescue units and other available facilities for providing assistance to anyone in distress at sea, and that such assistance is to be provided regardless of the nationality or status of such a person or the circumstances in which the person is found.

The Global Maritime Distress and Safety System (GMDSS) is an amendment to the SOLAS Convention which went into force in 1992. The GMDSS "requires all passengers and cargo ships which are 300 gross tons or more, and on international voyages, carry search and rescue transponders and satellite emergency position-indicating radio beacons . . . ." The idea is to increase the probability of locating ships and rescuing passengers after an accident. The Convention on the Safety of Life at Sea (SOLAS) was first adopted in 1914 after an international meeting to develop maritime safety regulations which was, in turn, a response to the
sinking of the Titanic in 1912.194 "The convention itself has been amended and revised many times . . . and the current SOLAS Convention of 1974 operates under the direction of the IMO."195 It "includes many important regulations regarding the safety of navigation and construction of ships as well as the standardization of safety equipment."196 As of the writing of this article, SOLAS is nearly "universally accepted and has been ratified by more than 145 . . . which represent 98.5% of the world’s shipping tonnage."197 It further stipulates the responsibility of a ship’s master to render assistance, stating that:

The master of a ship at sea which is in position to be able to provide assistance, on receiving a signal from any source that persons are in distress at sea, is bound to proceed with all speed to their assistance, if possible informing them or the search and rescue service that the ship is doing so.198

The SOLAS also suggests that the contracting governments should "ensure that necessary arrangements are made . . . for the rescue of persons in distress at sea around its coasts."199 There is also a duty to render assistance, referenced in the Facilitation of International Maritime Traffic.200 The FAL Convention was adopted in 1965 in order to prevent unnecessary delays in maritime traffic, increase efficiency by obtaining the highest degree of uniform procedures which would reduce documentation paperwork, and encourage cooperation between States; and, in order to obtain the highest degree of uniform procedures so that documentation paperwork will be reduced in order to increase efficiency.201 The FAL Convention also "sets out special facilitation measures for ships calling at ports in order to put ashore sick or injured crew members, passengers, or other persons for emergency medical treatment."202 The United States is not a

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194 Id. See also Severance, supra note 172, at 380. See also Wolgamuth, supra note 142 and accompanying text.
195 Morris, supra note 178, at 5.
196 Id.
197 Id. (citing Tauman, supra note 187, at 470).
198 Id. at 5-6 (quoting SOLAS and SAR Amendments, supra note 189).
199 Id. at 6 (quoting SOLAS and SAR Amendment, supra note 189).
200 Morris, supra note 178, at 6.
201 Id. at 6.
ratifying party to the UNCLOS even though President Reagan stated that certain provisions of the UNCLOS reflect customary international law. In our scenario, therefore, the U.S. Navy would be the party that would intervene and pick up the passengers who fell overboard at sea.

Refugees and/or asylum seekers represent a different problem. In our scenario, we discuss the possibility of there being refugees at sea. Afghani refugees were rescued at sea by our cruise ship. The next subtopic concerns this area of discussion.

C. International Migration—The People Who Are Refugees from “Somewhere”

There is a tremendous problem concerning an unprecedented number of people using maritime routes to cross international borders clandestinely. The U.N. Secretary-General’s report states that:

[M]ore than 223,000 arrived on the coast of Yemen from Somalia, with a considerable number having international protection needs. Approximately 35,481 people – triple the numbers since 2005 - entered Spain, especially via the Canaries, during the first 10 months. Reports indicate that the number of stowaways also more than tripled compared to 2005, with 244 incidents involving 667 stowaways.204

There are also other examples of people, who have been assumed dead at sea, “owing to the indifference,” if not willingness, of smugglers.205 “For example, it is estimated that only two thirds of the 300,000 sub-Saharan Africans” who attempted to reach the European Union by sea every year actually succeeded in doing so.206

In its Resolution 61/222, the General Assembly has called upon States to ensure that masters on ships flying their flag take the steps required by SOLAS, the International Convention on Maritime Search and Rescue (SAR Convention), UNCLOS and the International Convention on Salvage in order to provide

FAL Convention].
203 Id. at 7 (citing Proclamation No. 5928, 54 Fed. Reg. 777 (Dec. 27, 1988)).
205 Id.
206 Id.
assistance to persons in distress at sea. The Resolution urged all States to cooperate in order to insure the effective implementation of the amendments to the SAR Convention and SOLAS. The Resolution also called upon the States who had not yet done so to become parties and effectively implement "the Protocol against the Smuggling of Migrants by Land, Sea and Air, supplementing the United Nations Convention against Transnational Organized Crime and the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children."

The following is another example of the way the implementation and acceptance of these new guidelines regarding obligations of ship masters, and international agencies can have an effect.

In June 2006, a sailor on the Dutch registered 82,500-ton Holland American Line cruise ship, MS Noordam, spotted a person floating in the water about four miles off the coast of the Greek Island of Samos. The ship’s captain, Johannes Mateboer, and his crew proceeded to rescue 22 persons whose boat had sunk; the individuals were refugees from various countries including Somalia and Iraq.

The cruise ship and the International Council of Cruise Lines (ICCL) followed the guidelines and immediately contacted the proper organizations including the IMO who facilitated communication between the UNHCR and authorities in Greece, Turkey, and the Netherlands so that the passengers were disembarked in a timely and orderly manner at the ship’s next port of call which was Kusadasi, Turkey. Other recent rescues occurred in 2005 when the Danish ship, the Eli Maersk, rescued 39 people from the Gulf of Aden in September, and when another Danish ship, the MV Clementine Maersk rescued 27 refugees from the Mediterranean Sea in

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208 Id. at 12-13.
209 Id. at 12.
As the reader will observe, there are enough conventions and resolutions to take care of the problem; however, the number of refugees is obviously getting higher and higher and therefore there are other areas, outside of this article, which need to be addressed such as low water and no water supplies; civil wars; religious wars; overpopulation; etc. Until the root problems are addressed, the world's refugees will continue to be at the mercy of those who will or will not be kind enough to rescue them.

Does "slavery" have an additional, twenty-first century, name? Let us now explore briefly, for purposes of this article, the concept called "human trafficking."

D. Human Trafficking—The New Name for "Slavery"

Does "slavery" have an additional twenty-first century name? In our scenario, there are people being trafficked aboard the cruise ship. Trafficking is a major criminal enterprise. The word "trafficking" is basically the same as "slavery."212 The reason the word "slavery" is not used is that it is too rigid to capture the many connotations of modern human trafficking.213 As Dr. Scharie Tavcer states: "Trafficking does not occur in a vacuum. It is a crime as a result of various and combined social situations and circumstances, legal systems, people and their needs . . . [and] is not one event but a series of constitutive acts and circumstances implicating a wide range of actors."214 In fact, trafficking humans today is cheaper than buying slaves was in an earlier period of time.215 Not only has trafficking created new markets, the term "human trafficking" is an "artful legal term that identifies the commodity rather than the act; that is, the common element to all variations of slavery is human victimization, thus the term

211 Id. at 30-31.
213 Id.
215 See id. at 2 (citing Khaled Ali Beydoun, The Trafficking of Ethiopian Domestic Workers into Lebanon: Navigating Through a Novel Passage of the International Maid Trade, 24 BERKELEY J. INT'L L. 1009, 1010 (2007)).
successfully applies to any manifestation of slavery.\textsuperscript{216}

As an example of how pervasive the problem is, the United States estimates that there are up to 800,000 people trafficked internationally each year.\textsuperscript{217} Approximately 17,500 of them are trafficked into the United States each year.\textsuperscript{218} The United Nations estimates are even higher suggesting that the number of women and children trafficked is closer to four million and may be as high as twenty-seven million when including those trafficked into forced labor.\textsuperscript{219} The result of all this? An organized criminal enterprise gaining about $31.5 billion in profit every year.\textsuperscript{220} The U.N. defines human trafficking as:

[R]ecruitment, transportation, transfer, harboring, or receipt of persons, by means of a threat or use of force or other forms of coercion, of abduction, of fraud or deception, of the abuse of power or of a position of vulnerability or the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation includes, at a minimum, the exploitation or the prostitution of others or other forms of sexual exploitation, forced labor or services, slavery, servitude, or the removal of organs.\textsuperscript{221}

The U.N. adopted the International Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children in 2000.\textsuperscript{222} This protocol came years after the

\textsuperscript{216} Id. (quoting Mohamed Y. Mattar, Trafficking in Persons, Especially Women and Children, in Countries of the Middle East: The Scope of the Problem and the Appropriate Legislative Responses, 26 FORDHAM INT'L L.J. 721 (2003)).


\textsuperscript{218} Merrill, supra note 213, at 2.


\textsuperscript{220} Id. at 2-3 (citing Report of the Director-General, A global Alliance Against Forced Labour: Global Report Under the Follow-up to the ILO Declaration on Fundamental Principles and Rights at Work 46, 55 Int'l Labour Conference, 93rd Sess., Report I(B) (2005)).


\textsuperscript{222} Id. at 8 (citing Protocol to Prevent, Suppress, and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention against
ineffective 1949 United Nations Convention for the Suppression of the Traffic in Persons and the Exploitation or the Prostitution of Others.\textsuperscript{223} The 2000 Protocol incorporated a broad definition of trafficking, but the most important difference is that the modern United Nations Protocol was given teeth by the U.N.'s mandate calling for ratifying countries to enact criminal sanctions against traffickers.\textsuperscript{224} The Trafficking Protocol was entered into force in 2003 and was ratified by the United States in November, 2005.\textsuperscript{225} Currently, there are 111 countries participating in the Trafficking Protocol.\textsuperscript{226} In addition to the Trafficking Protocol, the United Nations 1982 Law of the Sea Convention (UNCLOS) also aids in the struggle against human trafficking.\textsuperscript{227} UNCLOS as contained in Article 99 states: "[E]very state shall take effective measures to prevent and punish the transport of slaves in ships authorized to fly its flag."\textsuperscript{228} In addition, Article 110 "authorizes a warship to board a foreign merchant ship on the high seas where reasonable grounds exist to suspect that the ship is engaged in the slave trade."\textsuperscript{229}

Akin to this problem is another problem which occurs on the high seas. It relates to the labor exploitation of men, women and children who are lured into well-paid fishing jobs and then find themselves forced to work in horrible conditions with little chance of escape.\textsuperscript{230} An example of this occurred in 2006 when more than thirty Burmese men and boys died from disease and lack of medical care on fishing vessels off the coast of Thailand.\textsuperscript{231} They had been falsely promised employment in seafood processing factories by traffickers, but instead were constrained on fishing vessels.\textsuperscript{232}

The issue now is whether or not it is "sensible for the same

\textsuperscript{225} Merrill, supra note 213, at 8-9 (citing Trafficking Protocol, supra note 223, art. 3(a)).
\textsuperscript{226} Id. at 9 (citing Trafficking Protocol, supra note 223, art. 5).
\textsuperscript{227} Id.; see also Friedrich, supra note 224, at 1149.
\textsuperscript{228} Id. at 11 (citing UNCLOS, supra note 174).
\textsuperscript{229} Id. at 11 (quoting UNCLOS, supra note 174, art. 99).
\textsuperscript{230} Id. (quoting UNCLOS, supra note 174, art. 110).
\textsuperscript{231} TIP Report 2005, supra note 85, at 7.
\textsuperscript{232} Id. at 11.
restrictions on visits, searches and seizures of vessels suspected of engaging in a slave trade to be maintained today? Or would it be more appropriate to treat [instances of] slave trading like piracy?"233 The difference between the treatment of piracy and slavery is as follows:

At no time have piracy and the slave trade been assimilated in international law, and the rights of visit, search and seizure[,] which exist, independently of treaty in the case of piracy, have always in the case of the slave trade been entirely dependent on treaty provisions. Piracy has long been recognized as a crime jure gentium and therefore repressible by any State regardless of the offender and the flag of his ship; the position with regard to the slave trader and his vessel has always depended on the existence of treaty rights.234

Today it is obvious that there is no difference between slavery and human trafficking except that the latter is more pervasive in our society. When UNCLOS was completed in 1982,235 human trafficking was not the problem that it is today. Since treaty law can be used as a framework for future reference and built upon, there is no reason why the international community cannot expand the definition of slavery or piracy to include human trafficking. By permitting this analogy to extend to trafficking we could expand the rights of the warships that have stopped and found trafficking on board a vessel, to allow seizure of ships as an available remedy which is not currently available under UNCLOS.236

E. Drug Trafficking—Are Cruise Ships Vulnerable?

Although not mentioned in our scenario, the illicit trafficking of narcotic drugs and psychotropic substances is a criminal activity that can cover different types of scenarios.237

[I]llegal activities of cruise members on commercial vessels; the off loads from mother ships to smaller coastal vessels; deep water drops of buoyed contraband

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233 Sohn & Noyes, supra note 78, at 190.
234 Id. at 189-90.
235 UNCLOS, supra note 174.
236 Id.
that are recovered by shore-based craft; and the concealment of drugs within commercial sea-freight containers [are examples of narcotics trafficking]. The modes of transport particularly favored by syndicates are fishing vessels, pleasure craft and container vessels. Commercial sea freight containers continue to be a major transport medium. Fishing vessels provide a means of transport for delivery of illicit drugs and mother-ship offloads, as well as for offshore refueling and provisioning for go-fast boats.\footnote{Id.}

It is rather obvious that unless the cruise ship is going on a world-wide cruise, it would be practical to consider cruise ships vulnerable to this type of activity.

IV. Conclusion

According to one source, there are twelve major multilateral conventions and protocols related to states’ responsibilities for combating terrorism.\footnote{Hodgkinson, supra note 100, at 630.} They are as follows:


As the reader observes from this article, there are numerous treaties involving various related topics in international law. On one hand, it is good to see that the 1982 United Nations Convention on the Law of the Sea has been used as a framework in order to develop international law. Most of these treaties are outgrowths of problems relating to the oceans, many of which have developed since the 1982 treaty. Yet, one can always return to the 1982 treaty in order to see where we started and how much we have accomplished thus far.

What we have learned from looking at the different type of problems created under the scenario in this article is that there needs to be recognition of the interrelationship among the numerous crimes at sea and the consolidation of conventional wisdom into a readable package. We can accomplish this result by streamlining all of our conventional wisdom into one legal regime instead of a confusing number. Human trafficking is an expansion of slavery concepts. All of the various crimes are interrelated to the point where none of them can be read in a vacuum. Slavery is only a part of today's human trafficking. Piracy is only a small part of terrorism. As the crimes differ and expand in the twenty-first century and thereafter, the earlier concepts are just as important as the recent conventions and must to be read together. The treaties have to be tied in together in order to accomplish results. In other words, there is a harmony or symbiosis between the old and the new. When nations prescribe new treaties, they must take into account the past concerns as well as current/future ones. We no longer live in a world which allows us to segregate international law into compartments.

240 Id. at 631-32.