

ADDRESSING THE CRITICISM ON FLAGS OF CONVENIENCE: SHOULD FLAGS OF CONVENIENCE BE ABOLISHED FOR THE CRUISE INDUSTRY?

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I.	INTRODUCTION.....	129
II.	H	
	Maritime Regulations Should Treat All Cruise Lines Equally, Regardless of Flag Registry.....	135
	B. Regulation by Port States.....	138
	C. Regulation by Classification Societies.....	140
	D. Regulation by Flag States.....	141
IV.	ADDRESSING THE TAX LOOPHOLE WITH A NOVEL APPROACH.....	142
	A. Flags of Convenience as a Quid Pro Quo Business Strategy.....	143
	B. 3 3 D W U R Q & U H D W H G 9 D O X H.....L.Q...WIKI & U X L V H , Q G X V	144
	C. Total Uniformity in Setting Cruise Industry Standards.....	146
V.	CONCLUSION.....	147

I. INTRODUCTION

Cruise companies, which have experienced phenomenal growth in the last decade, widely employ flags of convenience. This traditional maritime

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are lax in enforcing international maritime laws, fearing that it will make them less competitive as ~~tax~~ and lax enforcement havens for cruise companies.³

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may heighten the stakes of reforming regulations in the industry.

One standard that deserves further research to resolve issues with flags of convenience is an international convention, perhaps with the IMO, to create a uniform tax policy on cruise line revenue based on the amount

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industry continues to experience dynamic growth, a uniform tax policy will require the cruise companies to pay their fair share in corporate taxes and follow international maritime laws. Money collected from this tax can be invested in preserving the environment and ensuring the safety of the crew at sea. Prior to exploring various resolutions regarding the taxation issue, Section II first discusses the history of flags of convenience and how this traditional maritime business practice has allowed the cruise industry to drastically grow in the last century. Section III addresses the oversight and jurisdiction issues of the cruise industry and how flag states fail to enforce international maritime laws to vessels registered under their flags. Section IV discusses how the tax should be implemented by the Member States of the IMO and how money collected from this tax can allow cruise companies to continue operating profitably while in the public interest. Finally, section V will conclude by responding to the critics of flags of convenience and open registries by analyzing the importance of keeping the cruise industry afloat.

II. HISTORY OF FLAGS OF CONVENIENCE

ADDRESSING THE CRITICISM ON FLAGS OF CONVENIENCE 133
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 synonymous with shipowners using open registration tactics for political
 reasons or to conceal criminal or questionable activities.²⁴ Today, however,
 the term has evolved to represent a modern maritime business practice to
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 registration.²⁵ The Rochdale Report of 1970, published by the United
 Kingdom, lists the following six criteria that identify whether a ship is
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(1) The country of registry allows ownership and/or control of its
 merchant vessels by non-citizens;²⁷

(2)

shipowners from developed countries exploiting developing countries by registering their vessels under foreign flags while knowing that developing countries lack the resources and financial ability to inspect ships to enforce governmental or international regulations. In this context, the creation of open registries has led to numerous environmental and safety disasters in the maritime industry due to the lack of inspections and enforcement of existing international maritime laws.

III. OVERSIGHT AND JURISDICTION

National and international laws governing the maritime industry are extensive and variable. As a result, cruise ships are subject to robust layers of concurrent jurisdictions from port and flag states. The United Nations Convention on the Law of the Sea remains an important source of international law that outlines port state jurisdiction over ships on the high seas. UNCLOS provides that port states have the power to enforce their laws and regulations that are in conformity with international law, on ships that are flagged under foreign countries.³³

However, UNCLOS also provides that for a ship to engage in international commerce and operate in international waters, it must be registered in a country and it shall be subject to that country's laws. Thus, if a cruise ship is in the high seas, otherwise known as international waters, it is only subject to the laws of the flag state.³⁴

A. Maritime Regulations Should Treat All Cruise Lines Equally, Regardless of Flag Registry

The existing robust layers of maritime laws regulating the cruise industry should prevent disasters by treating all cruise lines equally, regardless of flag registry. The most notable example of the maritime industry enhancing passenger and crew safety on board a cruise ship after a disaster is the Costa Concordia disaster that took place on January 13, 2012. After the Costa Concordia struck a rock in the Tyrrhenian Sea and capsized, leaving thirty-two people dead, the Cruise Lines International Association

33. UNCLOS, *supra* note 10

(CLIA), the European Cruise Council (ECC), and the Passenger Shipping Association (PSA) adopted a new policy that required all embarking passengers to participate in muster drills before sailing. Additionally, Carnival Corporation, the parent company of Costa Cruises, now requires all the brands in its extensive portfolio to conduct muster drills before sailing.

many adaptations to regulations and protocols that were prompted by a disaster. Cruise industry regulations and protocols should not be afterthoughts of a disaster, instead they should be preventative measures. Passenger and crew safety is one of the countless issues that exist in the cruise industry today. Critics of flags of convenience highlight other issues, like cruise lines escaping responsibility from environmental disasters.

Some of the largest critics of flags of convenience are environmental groups that believe the cruise industry has a legacy of polluting the oceans. International environmental organizations, like Friends of the Earth, argue and public health of coastal communities, passengers, crew, and coastal and marine ecosystems at risk. Although the cruise industry is touting its implementing of preventative measures in pollution, all Carnival Corporation companies committed criminal environmental violations between 2017 and 2019.⁴⁰

The largest criminal environmental fines ever levied in the United States for deliberate pollution have been levied against the cruise industry. For example, the U.S. Coast Guard conducted an examination of the Caribbean Princess on September 14, 2013, during which certain crew members

36. A muster drill is a mandatory safety exercise with the objective to familiarize all passengers and the crew with the location (i.e., the muster station) where they are to assemble in the event of an emergency. What Is a Muster Drill (Safety Briefing) on Royal Caribbean Cruise Ship? ROYAL CARIBBEAN, <https://www.royalcaribbean.com/faq/questions/muster-drill-onboard-safety> (last visited Apr. 11, 2022).

37. According to SOLAS . . . Chapter III, Regulations 19.2.2 and 19.2.3, whenever new passengers embark, passenger Safety Briefing shall be given immediately before sailing or immediately after sailing. Passengers shall be instructed in the use of the lifejackets and the action to take in an emergency. Safety Briefing Muster Station Drill CARNIVAL, https://help.carnival.com/app/answers/detail/a_id/1200/~/safefing--musterstationdrill (last visited Nov. 10, 2020).

38. See generally LINDA NOWLAN & INES KWAN, CRUISE CONTROL: REGULATING CRUISE SHIPS, <https://www.royalcaribbean.com/faq/questions/muster-drill-onboard-safety> (last visited Nov. 10, 2020).

continued to lie in accordance with orders they received from Princess Cruise Lines supervisors.⁴² According to papers filed in court, the

of announced and unannounced safety inspections every year.⁶² Cruise ship inspections involve the implementation of thousands of specific requirements set by the IMO and other authorities.⁶³ However, although developed countries have the resources and money to ensure that cruise lines follow the L Q G X V W U \ | \ V W R S S U L R s a l l w i t h i n p o r t s , c r u s e l i n e s L V H V K L S V continue to conduct business with developing countries where IMO requirements and other regulations are not heavily enforced.⁶⁴

C. Regulation by Classification Societies

Flag states license classification societies to classify and certify cruise ships based on their structure, design, and safety standards.⁶⁵ Classification societies are independent, non-governmental organizations in the maritime industry that work closely with national governments, insurance companies, insurers, and other members of the community. These inspections help ensure that cruise ships comply with applicable standards and are managed responsibly.

Currently, there are more than fifty classification societies in the world and the thirteen largest marine classification societies are also members of the International Association of Classification Societies (IACS). After international statutory regulations are developed by member states of the IMO, IACS provides guidance and technical support by developing unified interpretations. Each IACS member society applies these interpretations. International maritime regulations that are developed by the IMO and the classification rule requirements are then codified in the International Convention for the Safety of Life at Sea (SOLAS), an international maritime treaty which sets minimum safety standards in construction, equipment, and operation of merchant ships.⁶⁶

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binding international rules to which it is subject.⁷² However, critics of flags of convenience argue that flag states insufficiently police and enforce regulations, like pollution, since statistics show foreign flag states act upon less than two percent of pollution dumping cases referred to them by the U.S. Department of State.⁷³ This major flaw in the cruise industry must change immediately.

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companies increase profits. As highlighted in the Rochdale Report, cruise line companies from developed countries take advantage of developing countries by registering their vessels under foreign flags because they know that developing countries lack the resource and financial ability to inspect ships to enforce governmental or international regulations.

The quid pro quo business strategy between cruise line companies and developing states seems like a good business model on its face for both entrepreneurs and open registry countries. However, the overall effect of open registries on the economies of developing states is negative. Flags of convenience make it difficult for developing states to compete effectively, and cruise lines take advantage of the cheaper labor available in those countries.⁸⁴ Although the creation of open registries and their administration comes from developed countries, the movement to restrict the flags of convenience also comes directly from developed countries. Instead of tightening open registries, developed countries should work with the IMO to create a uniform international tax policy for the cruise industry.

B. The Cruise Industry

The cruise industry depends on passenger satisfaction because a good customer experience will create value. Creating customer value for cruise line companies will increase brand loyalty, market share, price, and ultimately lead to higher profits. For cruise lines, more passengers equal more profit. In 2018, 12.68 million passengers embarked from U.S. ports in 2018, an 8.8% increase from 2016.⁸⁵ Modern cruise ships can hold up to 6,680 passengers and 2,200 crew members on any given sailing.⁸⁶ The Symphony of the Seas expects to make an average profit of \$227 a customer per day, which means it can easily bring in a profit of

82. ROCHDALE REPORT, *supra* note 26, ¶ 311

83. I.M. Sinan, UNCTAD and Flags of Convenience, 18 J. WORLD TRADE L. 95, 107 (1984).

84. *Id.*

85. CRUISE LINES INT'L ASS'N, CONTRIBUTION OF THE INTERNATIONAL CRUISE INDUSTRY TO THE U.S. ECONOMY IN 2018 2 (2019) [hereinafter CLIA].

86. Mark Matousek, The Biggest Cruise Ship in the World Has Robot Bartenders, Water Slide with 92-foot Drop, and a Nine-story Zipline — Here's What It Looks Like, BUS. INSIDER (Feb. 24, 2020, 8:19 AM), <https://www.businessinsider.com/royal-caribbean-debut-worlds-largest-cruise-ship-photos-2018-4>.

\$1.36 million a week.⁸⁷ However, because the cruise industry is only an American industry⁸⁸ on its surface, the majority of cruise line companies pay a 0.8% tax on their revenue, far below the U.S. corporate tax rate of 21%.⁸⁹

The first step towards implementing a uniform tax policy for cruise line revenue, that is based on patron created value, requires an understanding of how many passengers from developed states are creating customer value for cruise line companies. This value can be determined through annual reports

and enforce existing international maritime regulations. In return, cruise lines will be able to operate profitably and in the public interest.

C. Total Uniformity in Setting Cruise Industry Standards

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regulations is a long-term goal that will face powerful opposition from cruise
line lobbyists. However, change is not impossible. New cruise ship
regulations aiming to address safety issues are precedent in showing that

V. CONCLUSION

Addressing the need to develop further research in a uniform tax policy