

# CRUISE INDUSTRY REGULATION: WHAT HAPPENS ON VACATION STAYS ON VACATION

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## 1. Introduction

### 1.1 The Dianne Brimble Story

On 24 September 2002, the half-naked body of Queensland mother Dianne Brimble was discovered on the floor of a stranger's cabin on the P & O cruise ship 'Pacific Sky'. The ongoing coronial inquest was informed that Ms Brimble died of an overdose of a combination of alcohol and the illegal drug gamma-hydroxybutyrate, also known as 'Fantasy' or 'GBH'. She had been sexually assaulted, possibly by a number of men.

The inquest by the NSW Coroner identified a number of alarming issues relating to possible cover-ups in the days after the attack. There have been assertions that the cabin was not sealed and that ship's security staff allowed people of interest to remove items from it.<sup>1</sup> This was despite a request by Australian Detectives on route to investigate Ms Brimble's death that the Manager of Pacific Operations for P&O secure the scene.<sup>2</sup> A memory card from a camera belonging to one of the men who was last seen with Ms Brimble was lost. It was later found by a young boy and returned to police. Although the card had been reformatted, it was found to contain photos of Ms Brimble engaging in intercourse with several men, and of her lying in her own faeces on the floor.<sup>3</sup>

Stories have also emerged of several passengers who saw Ms Brimble's body in the cabin but who apparently did not realise that she was dead at the time. Other women have come forward to say that they were offered drugs on board the cruise. There has been evidence of alcohol induced activities such as men running naked through the corridors of the ship.<sup>4</sup>

Australian investigators were unable to board the vessel for two days following Ms Brimble's death while the ship travelled to New Caledonia. Once onboard, detectives carried out their investigation by socialising with other passengers in the onboard nightclub. Further, not all the relevant staff were interviewed about the incident. There have also been allegations that some evidence was not processed and that not all leads were followed through.<sup>5</sup> The Brimble inquest has raised many questions about what may have occurred in the days following Ms Brimble's death and the overall quality of the investigation.<sup>6</sup>

While Ms Brimble's death itself is tragic, the alleged circumstances leading up to it and the following cover-up are shocking. They have led to calls for greater regulation of the cruise industry.<sup>7</sup> On 7 July 2006, the Australian Prime Minister, John Howard MP, said he would be prepared to work with the States in any

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<sup>1</sup> ABC Radio 'Brimble Inquest Hears staff disturbed crime scene', *World Today*, 15 June 2006

<<http://www.abc.net.au/worldtoday/content/2006/s1663754.htm>> at 31 October 2006.

<sup>2</sup> *P&O told to seal Brimble Cabin, Inquest Told*, (2007) ABC News Online <<http://abc.net.au/news/newsitems/200702/s1841277.htm>> at 7 February 2007.

<sup>3</sup> ABC Radio 'Brimble inquest: Lolic changes story on the stand' *PM*, 15 September 2006

<<http://www.abc.net.au/pm/content/2006/s1742357.htm>> at 31 October 2006.

<sup>4</sup> ABC Radio 'Brimble inquest calls for more P and O staff to come forward' *PM*, 26 June 2006,

<<http://www.abc.net.au/pm/content/2006/s1672345.htm>> at 31 October 2006.

<sup>5</sup> ABC Radio 'Brimble inquest hears of weak security on ship' *PM Show*, 8 February 2007,

<<http://www.abc.net.au/pm/content/2007/s1843593.htm>> at 20 February 2007.

<sup>6</sup> *Ibid.*

<sup>7</sup> While Ms Brimble's death may have acted as a catalyst for discussion on these issues (in Australia at least) it is clear that regulation needs to cover a far wider range of issues.

attempt to regulate the cruise ship industry.<sup>8</sup> However regulating the cruise industry is not a simple exercise. Cruise ships spend little time actually in port, operators are based outside Australia and cruise lines are adverse to negative publicity. Considering the more recent claim of rape against a teenage girl from Queensland on the P&O ship “Pacific Star,”<sup>9</sup> it is fair to say that calls for regulation are warranted. Current regulations not only fail to address the investigation and reporting of crimes at sea, but also issues such as passenger health and safety, labour regulation and the environmental impact of cruise ships.

## 1.2 Outline and objective of this paper

This paper looks at the issues that face regulators in addressing the problems found on cruise ships working in an international setting. The first section looks at examples of the types of issues that need to be addressed by the industry and legislators. The second is an overview of the various regulation regimes already in place. The third part considers some of the issues that need to be overcome in order to fully regulate the cruise industry and examines some of the solutions offered by other countries. Finally, the paper concludes with suggestions of how industry regulation can be achieved and enforced.

## 2. Types of issues that are relevant to cruise ships

### 2.1 Crimes at sea

Many issues relating to crimes that occur at sea give rise to unease, such as the lack of a police presence onboard cruise liners and the prevalence of crimes occurring on cruises. In particular investigators face difficulties in investigating crimes at sea, first in not being able to access ships quickly and secondly, collecting information from both the crew and possible witnesses amongst the passengers.<sup>10</sup> This is in part because they may not come forward to investigators, or they may depart for other countries at the end of their cruise before the investigation is underway. There is also an issue with crimes not being reported either by victims or the ship’s crew.<sup>11</sup>

Violence at sea should ideally be investigated by the Captain and the cruise line’s onboard security staff and these incidences reported to independent authorities.<sup>12</sup> However, considering the financial implications of adverse publicity if the public becomes aware of the extent of some of these claims, cruise ships are clearly in a position of conflict of interest when it comes to crimes occurring on board their vessel. As such, one has to wonder if they are capable of (or should be permitted to) act as their own police officers. The existence of these impediments to investigation may raise some suspicion of secrecy surrounding the cruise industry.

While the main purpose of this paper is to discuss the issues that arise when crimes occur at sea, this is not the only conduct that occurs on cruise ships that causes international unease. The following are some other examples of questionable conduct that have led to calls for greater regulation of the cruise industry. These examples help to identify some of the problems faced in attempting to regulate the cruise ship industry.

### 2.2 Passenger Safety

Violent crimes are not the only dangers facing cruise passengers. Onboard the isolated environment of cruise liners, passengers are at the mercy of both man and nature. Events such as fires at sea and adverse

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<sup>8</sup> ABC Radio ‘Transcript of the Prime Minister, The Hon John Howard MP, interview with Madonna King’, 7 July 2006, <<http://www.pm.gov.au/media/Interview/2006/Interview2013.cfm>> at 2 March 2007.

<sup>9</sup> *Police investigate cruise rape allegation* (2007) ABC News Online <<http://www.abc.net.au/news/australia/qld/capricornia/200701/s1834811.htm>> at 7 February 2007.

<sup>10</sup> ‘Death on the High Seas’, *The Guardian*, 18 January 2007 <<http://www.guardian.co.uk/crime/article/0,,1992955,00.html>> at 8 February 2007.

<sup>11</sup> *The World Today – Cruise ship crime causes international concern* (2006) ABC Online <<http://www.abc.net.au/worldtoday/content/2006/s1674817.htm>> at 14 August 2006.

<sup>12</sup> JA Kinney, *The Slippery Slope of Security in the Cruise Industry: Report prepared for the Hon Chris Shays and the ICCL* <<http://blog.lipcon.com/Cruise%20Ship%20Security.pdf>> at 1 November 2006, 7.

weather conditions pose particular threats to both passengers and crew and there is the constant threat of piracy or terrorist attacks.<sup>13</sup> Passengers need to rely on the limited medical services available onboard in the case of any medical emergencies. In recent times, there have been a series of outbreaks of infectious disease such as noroviruses and gastrointestinal bugs aboard cruise ships, which have infected hundreds of passengers and crew at the one time.<sup>14</sup> Such outbreaks have caused the implementation of procedures to assess the health of cruise passengers before they enter port,<sup>15</sup> although they may not necessarily be used in all ports. While it is not the writer's intention to suggest that the ship's crew are unable to cope with such emergencies, passengers should be made clearly aware of the special limitations that are intrinsic to life on board a ship before contracting for the cruise.

Although the cruise industry works hard to reassure consumers that cruising is one of the safest forms of transport,<sup>16</sup> the reality is that life-threatening events occur regularly at sea. The extent and success of handling of these incidents depends on the training and skills of the crew and the emergency management programs that have been developed and implemented to cope with such urgent situations. There are regulations that require ships to have emergency procedures in place,<sup>17</sup> but there is currently no uniform approach to inspection and enforcement to ensure that the procedures are correctly implemented and maintained.<sup>18</sup> Passengers should also be aware that the ship's level of security and safety regulation is not standardised but rather is dependent on the burdens placed on it by the nation under which it is registered.

### 2.3 Environmental Safety

The International Maritime Organization (IMO) is a specialized agency formed by the United Nations to assess the need for international maritime conventions and to oversee their implementation.<sup>19</sup> Amongst them is the *International Convention for the Prevention of Maritime Pollution from Ships 1978* (MARPOL 73/78).<sup>20</sup> The convention and amendments aim to protect the marine environment from pollution by sea going vessels. While the implementation of Annex I<sup>21</sup> and II<sup>22</sup> are compulsory for signatory states, the others are voluntary.<sup>23</sup>

There is a particular emphasis under MARPOL 73/78 on particular regions considered to be of special importance due to the nature and extent of maritime traffic in those areas.<sup>24</sup> Unfortunately, some of the most vulnerable areas are those highly populated by cruise lines. The special precautions have not been implemented in these areas because coastal states concerned have failed to ratify them.<sup>25</sup>

For cruise lines, two of the most important MARPOL 73/78 Annexes are:

- IV – Regulations for the Prevention of Pollution by Sewerage from Ships, and
- V – Regulation for the Prevention of Pollution by Garbage.

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<sup>13</sup>S Sole and D Forney, *Controlling Crisis* (2006) World Cruise [Preventing Piracy] <<http://www.worldcruise-network.com/features/feature102/printable.html>> at 12 September 2006.

<sup>14</sup>J Pain, *Some Question Health Care on Cruise Ships*, Associated Press <[http://www.lipcon.com/news\\_article35.shtml](http://www.lipcon.com/news_article35.shtml)> at 25 October 2006.

<sup>15</sup>For a discussion on this issue see MJ Ferson, and K Ressler, 'Bound for Sydney Town: Health surveillance on international cruise vessels visiting the Port of Sydney' (2005) 182 *Medical Journal of Australia* 391 <[http://www.mja.com.au/public/issues/182\\_08\\_180405/fer10713\\_fm.html](http://www.mja.com.au/public/issues/182_08_180405/fer10713_fm.html)> at 14 August 2006.

<sup>16</sup>For example see *Personal Safety and Security*, International Council of Cruise Lines Website <<http://www.iccl.org/policies/personal.cfm>> at 1 November 2006.

<sup>17</sup>For example SOLAS provisions discussed below.

<sup>18</sup>See below for further discussion on this point.

<sup>19</sup>*Homepage* (2007) International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 January 2007.

<sup>20</sup>*International Convention for the Prevention of Pollution from Ships, 1973, as modified by the Protocol of 1978 relating thereto* (MARPOL 73/78), International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

<sup>21</sup>Regulation for the Prevention of Pollution by Oil.

<sup>22</sup>Regulation for the Control of Pollution by Noxious Liquid Substances in Bulk.

<sup>23</sup>Above n 20.

<sup>24</sup>*Special Areas*, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

<sup>25</sup>*Ibid.*

It is estimated that a cruise ship with 3000 passengers will create 30,000 gallons of sewage and 11.5 tons of garbage in a day.<sup>26</sup> However the regulations that these ships operate under are the same as large tankers and other vessels operating with far fewer crew and passengers.<sup>27</sup> Additionally, as with safety regulations, the level of enforcement of the regulation of discharge by cruise ships is dependent on the undertaking made by the country the ship is registered under or where the pollution occurs.

## 2.4 Labour Issues

Cruise ships draw workers from around the world attracted by the idea of eternal holidays and fun in the sun. The reality is that many of these people work 12 – 14 hours a day, seven days a week.<sup>28</sup> Often they rely largely on tips to supplement their meagre income. Some cruise companies pay travel and accommodation costs for their crew. In the event that a worker resigns or is fired they may be required to pay back their travel money by continuing to work onboard without pay, sometimes for several weeks.<sup>29</sup>

The practice of using international hiring offices to employ crews from human resource pools also raises security concerns. While companies may require background checks on staff, they cannot guarantee that these are carried out to the extent that may be required in countries such as the USA or Australia.<sup>30</sup> While most of the senior staff come from shipping families, many of the most disadvantaged and low paid staff are from poorly educated, low socioeconomic backgrounds and may have difficulty communicating with passengers.<sup>31</sup> However, they may be responsible for important areas such as food preparation, cleaning and hygiene, and childcare.

In all these examples the problems arise not necessarily from a lack of regulation but from the discrepancies created when various nations are responsible for identifying, investigating and punishing crimes and breaches of law. The discussion below identifies how these discrepancies have come about and how the international maritime community is attempting to alleviate these problems.

## 3. Conflict of laws

Although it may seem that greater regulation is required to prevent unwanted incidents occurring on cruise ships, it is not necessarily the case that there is a lack of regulation governing cruise line activities. In fact, many local and international laws, regulations and agreements govern maritime conduct. The result is a complex matrix of jurisdictional conflict that combines to muddy the waters when it comes to regulating conduct or investigating maritime crime. The following is an overview of the various levels of regulation for a cruise ship operating in Australia and a summary of their consequences.

### 3.1 State legislation

In Australia the individual States and Territories have responsibility for enacting laws for the ‘peace, order and good Government’ of their jurisdiction. Such laws are enforced to the extent that they do not conflict with any law made under the Constitution of Australia.

The states and territories also have independent control of the investigation and enforcement of laws that they have enacted, through the local police force and other security agencies. However, due to the nature of the Commonwealth there is often a need for cooperation between the various state and federal agencies.

Between 1998 and 2001, all Australian States and Territories, except the ACT,<sup>32</sup> introduced uniform legislation through the *Crimes at Sea Acts*.<sup>33</sup> These Acts determine the jurisdiction of crimes committed at

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<sup>26</sup> Washington Public Interest Research Group, *Cruising for a Bruising: Why Washington needs laws to protect its waters from cruise ship dumping* (2005) 6.

<sup>27</sup> Oceans Blue Foundation, *Blowing the Whistle and the case for cruise certification* (2002)18.

<sup>28</sup> International Transport Workers Union, *The Cruise Industry: A submission to the International Commission on Shipping* (2000)7.

<sup>29</sup> International Commission on Shipping, *Inquiry into ship safety: Ships, Slaves and Competition* (2000) 60.

<sup>30</sup> Above n 12, 4.

<sup>31</sup> *Ibid.*

<sup>32</sup> As the ACT has no coastal waters, it was not necessary to enact legislation.

sea aboard vessels within two hundred nautical miles of the Australian coast. The Commonwealth has enacted mirror legislation in the *Crimes at Sea Act 2000* (Cth). Under the various legislations, the laws of a state apply under state jurisdiction to crimes committed within twelve nautical miles of the state or territory coastline.<sup>34</sup> Between twelve and two hundred nautical miles from the coastline, the law of the relevant State or Territory applies under the jurisdiction of the Commonwealth.<sup>35</sup>

The jurisdictional distinction, though seemingly minor, can have a profound effect on the outcome of a trial. For example, while a trial for an offence committed within the Commonwealth jurisdictional zone off the coast of Western Australia will be tried according to Western Australian criminal law in a State court, the trial will run under Commonwealth procedure.<sup>36</sup> This would mean, for example, that in such a trial a person could not be convicted by a majority verdict even though it is permitted under the State legislation<sup>37</sup> as it has been determined that Section 80 of the *Judiciary Act*<sup>38</sup> excludes majority verdicts for criminal offences against the Commonwealth.<sup>39</sup>

Despite these difficulties however, at least there is some defined approach to incidents occurring within 200 nautical miles of the coast. As we shall see, this approach is infinitely preferable to what might happen if the events occur on the high seas. The jurisdictional conflict between the States, Territories and Commonwealth provides an insight into the possible issues that may arise when international laws and conventions are included in the equation.

### 3.2 Other relevant Federal legislation

In addition to the *Crimes at Sea Act 2000*, the Commonwealth has enacted the *Admiralty Act 1988* which has force over any ship not intended for use in inland waters.<sup>40</sup> The *Admiralty Act* provides jurisdiction for civil actions against a ship for a variety of maritime claims, including personal injury and loss of life.<sup>41</sup> The *Admiralty Act* applies to any action regardless of the location of the originating incident or the nationality of the ship involved.<sup>42</sup> However, in reality, jurisdiction is generally restricted unless there is some nexus with Australia.<sup>43</sup> In the case of cruise lines, jurisdiction may possibly be inferred from the mere fact that Australian passengers are affected by the incident, although this right may be lost if the conditions on the cruise ticket specifies an alternative jurisdiction.<sup>44</sup>

The Commonwealth also has the authority to bind Australia, including the States and Territories, to international conventions and treaties as considered appropriate. Some of the relevant conventions are discussed below.

### 3.3 Conventions and International Law

There are many maritime conventions and other protocols and agreements currently overseen by the IMO.<sup>45</sup> The need for these international regulations has developed from an increase in international commerce and recognition of the need to ensure uniform safety and environmental standards aboard vessels.

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<sup>33</sup> *Crimes at Sea Act 1998* (NSW), *Crimes At Sea Act 2000* (NT), *Crimes at Sea Act 2001* (Qld), *Crimes at Sea Act 1998* (SA), *Crimes at Sea Act 1999* (Tas), *Crimes at Sea Act 1999* (Vic), *Crimes at Sea Act 2000* (WA).

<sup>34</sup> See generally Schedule 2 Part 2 of the State and Territory legislation.

<sup>35</sup> See generally Schedule 2 Part 2 of the State and Territory legislation.

<sup>36</sup> Schedule 2 Part 2 s3.

<sup>37</sup> Schedule 1 Part 2 s3(2) Example 1 of the State and Territory legislation.

<sup>38</sup> *Judiciary Act 1903* (Cth).

<sup>39</sup> *Cheatle v The Queen* (1993) 177 CLR 541.

<sup>40</sup> *Admiralty Act 1988* (Cth) s5(1), (3).

<sup>41</sup> *Admiralty Act 1988* (Cth) s4(3)(c), (d).

<sup>42</sup> *Admiralty Act 1988* (Cth) s5(1).

<sup>43</sup> A Mutton, 'Choice of Law and the High Seas: *Blunden v Commonwealth* (2004) 26 *Sydney Law Review* 427, 428.

<sup>44</sup> For a discussion on choice of jurisdiction clauses and disclaimers on cruise tickets see K Lewins, 'The Cruise Ship Industry – Liability to Passengers for Breach of s52 and s74 *Trade Practices Act 1974* (Cth)' (2004) 18 *MLAANZ Journal* 30, 32. For a comparison on this issue see also DM Muller, 'Recent Developments in Maritime Personal Law: Personal Injury' 22 *Tulane Maritime Law Journal* 513, 526.

<sup>45</sup> *Conventions*, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.

Australia is a signatory to approximately 40 IMO conventions, amendments and protocols.<sup>46</sup> Among those most relevant for the purposes of this paper are:

- *The International Convention for Safety of Life At Sea (SOLAS) 1974,*
- *The Athens Convention Relating to the Carriage of Passengers and their Luggage by Sea (PAL) 1974,*
- *The Convention on Limitation of Liability for Maritime Claims (LLMC) 1976, and*
- *The International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW).*

IMO conventions are continuously under review to meet the changing needs of modern shipping. In particular, changes have been made to reflect the dramatic increase in size of modern cruise liners and the consequential increase in the number of passengers onboard. In response to calls for a review of cruise ship safety in 2000,<sup>47</sup> the IMO Maritime Safety Committee (MSC) recently completed a project focusing on passenger ship safety. The MSC concluded that prevention is the best approach to protect passenger safety aboard cruise ships. To help to achieve this aim, a series of amendments to *SOLAS* were adopted in late 2006.<sup>48</sup>

The 2006 *SOLAS* amendments relate primarily to the design of passenger vessels. They have been introduced with the aim of ensuring the safety of passengers in the event that damage occurs to the vessel. In particular, the amendments state that where the casualty threshold<sup>49</sup> is exceeded a vessel should be capable of remaining viable for three hours. This is the time considered sufficient to properly evacuate the vessel.<sup>50</sup> Other changes include:

- that safe areas and the essential systems are to be maintained while a ship proceeds to port after a casualty, which requires redundancy of propulsion and other essential systems;
- the provision of on board safety centres from which safety systems can be controlled, operated and monitored;
- the installation of fixed fire detection and alarm systems, including requirements for fire detectors and manually operated call points, capable of being remotely and individually identified;
- the introduction of fire prevention techniques, including amendments aimed at enhancing the fire safety of atriums, the means of escape in case of fire and ventilation systems; and
- that sufficient time be allowed for orderly evacuation and abandonment, including a requirement for the installation of essential systems that must remain operational in case any one main vertical zone is unserviceable due to fire.<sup>51</sup>

While these changes are important, they are not expected to enter into force until July 2010<sup>52</sup>. Further, they appear to apply only to newly built vessels<sup>53</sup> leaving passengers on existing vessels unaware of the possible lack of protection.

As a result of an inquiry into a series of incidents during the late 1980s<sup>54</sup> the IMO also undertook to introduce regulation to better manage the protection of human life and to ensure safety and prevent injury at sea. The aim of the regulation was to address the influence of 'human element' in incidents onboard ships. The resulting *International Management Code for the Safe Operation of Ships and for Pollution Prevention*

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<sup>46</sup> *Status of Conventions by Country*, International Maritime Organization website.

<[http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D16070/status.xls](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16070/status.xls)> at 31 October 2006.

<sup>47</sup> *IMO Secretary-General calls for review of safety of large passenger ships*, International Maritime Organization website <[http://www.imo.org/About/mainframe.asp?topic\\_id=68&doc\\_id=553](http://www.imo.org/About/mainframe.asp?topic_id=68&doc_id=553)> at 31 October 2006.

<sup>48</sup> *Passenger Ships*, International Maritime Organization Website <<http://www.imo.org/home.asp>> at 23 January 2007.

<sup>49</sup> The casualty threshold is the amount of damage that a ship can sustain and still return to port.

<sup>50</sup> Above n 48.

<sup>51</sup> *Ibid.*

<sup>52</sup> *Ibid.*

<sup>53</sup> *Ibid.*

<sup>54</sup> LJ Sheen, *Herald of Free Enterprise* as discussed on Safety Management, International Maritime Organization website <<http://www.imo.org/home.asp>> at 31 October 2006.



(ISM Code) became compulsory for passenger ships, tankers and high speed water craft in July 1998.<sup>55</sup> The ISM Code creates an onus on the responsible operator of the ship to ensure the establishment of a safety management system onboard the ship.<sup>56</sup> While the ISM and the 2002 amendments were welcomed by the maritime industry, the extent that they have been fully implemented as a tool for upgrading and maintaining vessels is questionable.<sup>57</sup>

To counter increases in terrorist activity in shipping, the IMO established the *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988 (SUA 1988)*.<sup>58</sup> The effect of SUA 1988 is to ensure that appropriate action is taken against people committing unlawful acts against ships and their passengers. SUA 1988 covers actions such as the seizure of a ship by force, acts of violence against people onboard and placing devices onboard a ship that are likely to damage or destroy it.<sup>59</sup> SUA 1988 has since been amended to extend to offshore platforms and to acts intended to intimidate Governments or international organisations, though these protocols have not yet come into force.<sup>60</sup>

Breaches of conventions can be enforced in a number of ways. Some countries have introduced legislation that will allow jurisdictional control of an incident if either the offender or the victim is a citizen of that country.<sup>61</sup> Primarily, the country with jurisdiction over the water in which the incident occurred enforces breaches of conventions. However, if the incident occurs on the high sea, the onus of enforcing the relevant convention falls on the nation under which the offending vessel is flagged. This procedure is problematic as many cruise ships in particular are registered under a flag of a country with which they have no other connection. As discussed below, the so-called 'Flag of Convenience' has proven to be a popular tool to help protect cruise ships from regulatory scrutiny.

### 3.4 The use by Cruise Ships of Flags of Convenience (FOC)

In the early 1920's American built cruise liners registered in other countries to circumvent US prohibition restrictions.<sup>62</sup> While this motivation is not necessary today,<sup>63</sup> the use of an FOC is still popular to help overcome restrictive labour and safety requirements as well as to avoid costly local taxes.<sup>64</sup>

Registration in a FOC country means that the laws and regulations of that country govern activities onboard that ship. Many FOC countries compete to produce regulatory packages most appealing to ship owners and their specific circumstances.<sup>65</sup> However, this use of FOC can endanger the well-being of passengers and crew through poor regulation and lack of enforcement.

In an attempt to attract registration, some FOC countries will implement lax labour, safety and environment codes.<sup>66</sup> Ship owners can simply 'forum shop' in order to find the most profitable and advantageous regime for their business enterprise.<sup>67</sup> This puts consumers, who are unlikely to be aware of the differences in regulation governing FOC vessels, in a position where they may be disillusioned when services do not comply with the standards to which they are accustomed. Further, the fact that consumers are unaware of

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<sup>55</sup> *Information Resources on the International Safety Management Code: Information Sheet 23* (2006) <[http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D16180/ISMCode%2825October2006%29.doc](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16180/ISMCode%2825October2006%29.doc)> at 31 October 2006.

<sup>56</sup> *Ibid.*

<sup>57</sup> 'Code of Conduct', *Lloyd's List*, 16 October 2006 (No.59273) 7 as quoted in 'Information resources on the International Safety Management Code: Information Sheet No 23', 25 October 2006 *International Maritime Organization Library Service External Relations Office* <[http://www.imo.org/includes/blastDataOnly.asp/data\\_id%3D16180/ISMCode%2825October2006%29.doc](http://www.imo.org/includes/blastDataOnly.asp/data_id%3D16180/ISMCode%2825October2006%29.doc)> at 31 October 2006.

<sup>58</sup> The SUA came into force on 1 March 1992.

<sup>59</sup> *Convention for the Suppression of Unlawful Acts against the Safety of Maritime Navigation 1988*, International Maritime Organization Website <[http://www.imo.org/Conventions/mainframe.asp?topic\\_id=259&doc\\_id=686](http://www.imo.org/Conventions/mainframe.asp?topic_id=259&doc_id=686)> at 1 November 2006.

<sup>60</sup> *Ibid.*

<sup>61</sup> For example *Merchant Shipping Act 1995* (UK) and *United States Code*, Title 18, Chapter 1, s7.

<sup>62</sup> MJ Wing, 'Rethinking the easy way out: Flag of convenience in the post-September 11<sup>th</sup> era' (2003) 28 *Tulane Maritime Law Journal* 173,175.

<sup>63</sup> US States started to repeal prohibition laws from 1933.

<sup>64</sup> Above n 62.

<sup>65</sup> *Ibid* 176.

<sup>66</sup> *Ibid*, 177.

<sup>67</sup> *Ibid.*

lesser regulation, particularly regarding safety requirements, means that if an incident does occur they may not be afforded the protection that they would normally expect.

Following accidents in isolated areas at sea, it is vitally important that passengers and crew have available to them a full range of protective measures to ensure their safety. As discussed above, the standard for these measures is set out in the ISM Code. It is the responsibility of the country of registration to ensure that their ships comply with these regulations. However, if FOC countries do not undertake to enforce these measures to the full extent required under the ISM Code, there is little that other countries can do to impose conformity.

In recent years, the fear of terrorist attacks on cruise liners has increased.<sup>68</sup> As a result of the 9/11 attacks on the USA, most countries have increased security measures, particularly in the tourism sector. This is not necessarily so for the cruise industry where the lack of security checks may be one of the attractions passengers.<sup>69</sup> Unfortunately, if cruise companies continue to ignore the need for full security checks on all passengers and crew, the threat of an attack could become a horrendous reality. While security solutions may be created by the IMO, little can be done to force an operator to comply. In the meantime, there is likely to be an imbalance between the level of security the passengers would assume to be in place, and the reality of what actually exists.

Even in Western countries there has been some opposition to high-level background check on maritime workers.<sup>70</sup> The logistics of carrying out complex checks on crew from many different nationalities, many of whom come from countries that already identify them as being a potential terrorist threat, are enormous. Comprehensive background checks cannot be carried out without the full cooperation of all maritime registry nations, cruise lines, countries of origin and even the ports of operation.

Aside from the involvement in the IMO, the United Nations itself has also been involved in the preparation of conventions designed to regulate international use of the marine environment and to resolve conflict over the jurisdiction of the high sea.<sup>71</sup> The *UN Convention on the Law of the Sea* (10 December 1982) (*UNCLOS*) reinforces the requirements placed on ships by other conventions. *UNCLOS* includes the requirement for ships to be registered and to fly the flag of one nation.<sup>72</sup> Registration under a State (the 'Registry State') creates an onus on that State to ensure that ships are seaworthy and that proper precautions are undertaken to ensure safety at sea and prevent pollution.<sup>73</sup> This includes the burden of ensuring that relevant international regulations are understood and observed by the ship's crew,<sup>74</sup> and enforcing appropriate penalties where required.<sup>75</sup>

There is also an obligation on Registry States to ensure that fatalities or injury occurring onboard one of their registered ships are subject to an inquiry by suitably qualified persons.<sup>76</sup> However, once again the extent of inquiry required is not clearly defined leaving interpretation of the extent of this duty to the relevant State. As outlined earlier, one of the major difficulties when anything untoward happens at sea is that the cruise ship operator is in charge of the crime scene. The cruise ship operator is also in a position of conflict because it is in the best interests of the operator to downplay the matter. As has been demonstrated in the Brimble inquiry, cruise lines can not be relied upon to make the best interests of the victim a priority.

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<sup>68</sup> United States. Congress. Congressional Research Service. *Maritime Security: Potential Terrorist Attacks and Protection Priorities*. Report, 9 January 2007. <<http://www.fas.org/sgp/crs/homesec/RL33787.pdf>> at 21 February 2007.

<sup>69</sup> Above n 62, 189.

<sup>70</sup> 'Union warns: No witch hunt' (2004) *Maritime Workers Journal*. <[http://www.mua.org.au/journal/julaug\\_2004/witchunt.html](http://www.mua.org.au/journal/julaug_2004/witchunt.html)> at 31 October 2006.

<sup>71</sup> *United Nations Convention on the Law of the Sea: A historical Perspective*, (1998) Oceans and Laws of the Sea, A division for Ocean Affairs and the Law of the Sea <[http://www.un.org/Depts/los/convention\\_agreements/convention\\_historical\\_perspective.htm](http://www.un.org/Depts/los/convention_agreements/convention_historical_perspective.htm)> at 1 November 2006.

<sup>72</sup> *UN Convention on the Law of the Sea* Arts 91, 92.

<sup>73</sup> *UN Convention on the Law of the Sea* Art 94 (3).

<sup>74</sup> *UN Convention on the Law of the Sea* Art 94 (4)(c).

<sup>75</sup> *UN Convention on the Law of the Sea* Art 94 (5).

<sup>76</sup> *UN Convention on the Law of the Sea* Art 94 (7).



Clearly, there is a gap in the current international requirements as to the procedure that should take place when a crime occurs at sea. While P&O have agreed to improve their procedures<sup>77</sup> this is not sufficient to protect passengers boarding other cruise lines. In any event one has to doubt the effectiveness of self regulation given the conflict of interest already discussed. Some other solution needs to be found.

One way to ensure uniform enforcement of safety provisions would be to increase the obligations under UNCLOS to include carrying an independent investigator or officer over and above their normal security personnel. These officers could operate in a capacity similar to that of an air marshal with both protective and investigative powers. For this to operate logistically, the officer would ideally be provided either by the port of departure or the next port of call. If these changes cannot be achieved through the Convention then it may be necessary, though not ideal, for port of call countries to regulate on this matter individually. However, this approach is likely to exacerbate the existing jurisdictional ambiguity.

#### 4. Possible resolutions for jurisdictional differences

Independent attempts have been made by some nations to resolve the complex issues created by jurisdictional conflicts, in order to better investigate and prosecute maritime crime and to increase transparency in the cruise industry.<sup>78</sup> Examples of the changes introduced in the US and UK are discussed below. Unfortunately, these attempts are usually reactive responses to incidents such as the attacks against Ms Brimble. However, despite this fact, there is undoubtedly a need to resolve the maritime conflict of laws issues in order to better address crimes committed at sea. The following is a discussion on some of the most recent attempts at simplifying the jurisdictional question.

##### 4.1 US approach

The US has a great affinity with the cruise industry. Americans are amongst the highest consumers of cruise ship holidays. Many American cities are regular ports of call for cruise liners. The US has enforced laws that allow certain US agencies the authority to inspect ships visiting US ports to ensure that they meet international sanitation and safety standards.<sup>79</sup> In addition, the shipping industry in the US is bound by the *Merchant Marine Act -1920 (US)*, (*Jones Act*), which requires that all vessels transporting goods, including passengers, between US ports must be US built, owned and documented.<sup>80</sup> However, cruise lines are able to circumvent this legislation by using American cities as a port of call between other nations. This prevents the need for ships to register in the US and allows for continued use of the FOC.<sup>81</sup>

Further power of investigation is provided to US authorities by the *United States Code (US Code)*. Under the *US Code*,<sup>82</sup> the FBI has jurisdiction to investigate crimes committed on a ship if:

1. the ship, regardless of flag, is a US owned vessel, either whole or in part, regardless of the nationality of the victim or the perpetrator;
2. the crime occurs in the US territorial sea (within 12 miles of the coast), regardless of the nationality of the vessel, the victim or the perpetrator; or
3. the victim or perpetrator is a US national on any vessel that departed from or will arrive in a US port.<sup>83</sup>

<sup>77</sup> *Statement from P&O Cruises Australia on Safety and Security* (2006) P&O Cruises website.

<[http://www.pocruises.com.au/html/statement\\_from\\_p\\_o\\_cruises\\_australia\\_on\\_safety\\_and\\_security.cfm](http://www.pocruises.com.au/html/statement_from_p_o_cruises_australia_on_safety_and_security.cfm)> at 20 February 2007.

<sup>78</sup> For example the *US Cruise Line Accurate Safety Statistics Act (CLASS ACT)* introduced into Congress on 28 June 2006

<<http://www.govtrack.us/congress/bill.xpd?bill=h109-5707>> at (1 November 2006).

<sup>79</sup> K Dupont, 'Cruise lines operate under layers of laws – Vessels fly different flags; rules complex across seas', *The Miami Herald* (Miami), 31 May 2003, 15.

<sup>80</sup> *Merchant Marine Act of 1920 (US) Sec 27 (Jones Act)*.

<sup>81</sup> Above n 62, 181.

<sup>82</sup> *United States Code*, Title 18, Chapter 1, s7.

<sup>83</sup> United States. Cong. House of Representatives. Committee on Government Reform Subcommittee on National Security. Emerging Threats and International Relations and the subcommittee on Criminal Justice, Drug Policy and Human Resources. Chris Swecker. Testimony, 13 December 2005. *Chris Swecker, Assistant Director*,

More recently, Congress has introduced legislation to make reporting of injury or crime at sea compulsory through the *Cruise Line Accurate Safety Statistics Act (CLASS Act)*.<sup>84</sup> While still in the early stages of implementation,<sup>85</sup> the *CLASS Act* is designed to ensure that cruise companies are more transparent in their reporting of incidents that occur at sea. Among other objectives, the *CLASS Act* will require:

- cruise ship owners that use a US port to report any crime, man overboard or missing person incident that occurs onboard and involves an American citizen to the Department of Homeland Security (DHS) within four hours of the master of the ship learning of the incident;
- the cruise company to submit a quarterly report of each crime, missing person or man overboard case which occurs on its vessel to the DHS, which will make the information available on the internet;
- the DHS to inspect each cruise ship that docks in the US to ensure that ship has adequate equipment and trained personnel to investigate crimes; and
- a cruise company to refer potential consumers to the internet site with cruise crime statistics and provide the name of each country the ship is visiting and the location of the US embassy and consulate in each country.<sup>86</sup>

These changes may help to remove some of the secrecy surrounding the cruise industry. The *CLASS Act* allows for the imposition of civil penalties for non-compliance with these requirements. It does not go so far as to require the authorities to investigate any incident, however the power of investigation may be implicit under the US Code discussed above. Without proper investigation and prosecution of these incidents by American or other international authorities as they occur, the Act does little more than advise potential consumers that incidents have occurred.

It is also recognised that success in any investigation requires the cooperation of the other involved nations.<sup>87</sup> While a discretionary right to jurisdiction remains, countries such as the US will still be at the mercy of FOC countries to require their ships to abide by these conditions. Ideally, in addition to the civil penalties, the *CLASS Act* would restrict access and departure of US ports if cruise lines failed to comply. While such restrictions may provide a further financial incentive for cruise ship operators, the logistics of holding huge cruise ships with thousands of passengers and crew in port or offshore for extended periods of time may make this proposal unworkable.

## 4.2 UK approach

The UK has legislation that applies the jurisdiction of the British Court over crimes committed within the territorial waters. The *Territorial Waters Jurisdiction Act 1878* (UK) confers jurisdiction of UK law on incidents occurring within 12 nautical miles of the coastline. The *Aviation and Maritime Security Act 1990* (UK) gives jurisdiction to the offence of hijacking and subsequent related offences against a person or property regardless of the nationality of the perpetrator or the location of the ship.<sup>88</sup> Under this legislation there is no required territorial nexus with the UK unless the ship is a warship, naval auxiliary or ship used by customs or police.<sup>89</sup>

Jurisdiction is also extended to include crimes committed by a British subject on board a foreign ship under the *Merchant Shipping Act 1995* (UK).<sup>90</sup> However, it appears that the English Courts are loathe to claim

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*What International and National Laws Pertain to Security of Americans Onboard Ships Travelling Outside U.S. Territorial Waters?*, FBI Website <<http://www.fbi.gov/congress/congress05/swecker121305.htm>> at (1 November 2006).

<sup>84</sup> *US Cruise Line Accurate Safety Statistics Act (CLASS Act)* introduced into Congress on 28 June 2006 <<http://www.govtrack.us/congress/bill.xpd?bill=h109-5707>> at 1 November 2006.

<sup>85</sup> The Bill was sent to the Subcommittee on Coast Guard and Maritime Transportation on 29/6/2006. As of 10 February 2007 there has been no further action.

<sup>86</sup> *Shays, International Cruise Victims announce bipartisan Cruise Line Accurate Safety Statistics Act* (2006) Congressman Christopher Shays's website <<http://www.house.gov/shays/news/2006/june/junecruise.htm>> at 1 November 2006.

<sup>87</sup> Above n 83.

<sup>88</sup> *Aviation and Maritime Security Act 1990* (UK) Part II ss 9-13.

<sup>89</sup> *Aviation and Maritime Security Act 1990* (UK) Part II ss 9-13.

<sup>90</sup> *Merchant Shipping Act 1995* (UK) ss281, 282.

jurisdiction unless there is some real nexus to the crime.<sup>91</sup> It remains to be seen whether the UK will extend its boundaries for this purpose in the event that a crime that occurs on a ship that falls under a FOC regime is not prosecuted.

## 5. How should Australia regulate the cruise ship industry?

The Commonwealth Government has a number of options available to it, such as - to create new legislation to provide protection to Australians at sea, and to require higher standards by cruise liners through use of existing legislation. Suggestions are discussed below.

### 5.1 Further regulation

Just as the Commonwealth has the power to invoke jurisdiction under the *Admiralty Act*, so too could legislation be enacted to confer jurisdiction for criminal actions without a direct nexus to Australia as is required under the *Crimes at Sea Act*. Use of the external affairs power under the Constitution<sup>92</sup> will enable legislation that will ensure that Australian services could investigate and prosecute crimes committed on the high seas. While there may be no physical nexus as such, it would be sufficient that the criminal act occurred outside of Australian waters<sup>93</sup> and the subject matter of the Act was of international concern<sup>94</sup> or that the Act is intended to foster good relations with other countries.<sup>95</sup> Such legislation would be particularly useful for ships leaving or bound for Australian ports.

Ideally, legislation of this type would work in a similar vein as the *US Code* and *CLASS Act* in that it would require all incidents onboard to be reported to Australian authorities within a certain time. The difficulty would be to enforce this requirement on foreign owned ships. To overcome this problem all ships visiting Australian ports, both when arriving and departing, could be required to maintain and provide to Australian authorities a record of any onboard incidents as a condition of further entry to port, coupled with financial penalties if this does not occur. Even though some of these incidents may occur within the waters of other nations, in this age of electronic communication it is not a great burden on a ship to report to a number of different countries. While it would also be ideal to have the power to carry out investigations onboard while the ship is in port, logistically this may not be appropriate. However, the financial implications of being forbidden to enter Australian ports again may force cruise lines to comply.

### 5.2 Existing Powers

Australia already has in place comprehensive legislation protecting the rights of consumers through the *Trade Practices Act 1974 (Cth) (TPA)*.<sup>96</sup> The *TPA* helps to ensure honesty in advertising by restricting conduct by corporations that is misleading or deceptive, or likely to mislead.<sup>97</sup> Section 52 provides a mechanism for action against companies who misrepresent their goods or services through the actions of their employees or the information provided to consumers. In some cases, this includes a duty not to remain silent if there is a reasonable expectation that information should be disclosed that may influence a persons decision to enter into the contract.<sup>98</sup> An action can also be brought against companies for claiming that services are of a particular quality or standard if it is found that they do not meet those standards.<sup>99</sup> The jurisdiction of the *TPA* extends offshore through the inclusion in the definition of a 'corporation' of foreign corporations as long as the company is registered in Australia.<sup>100</sup> It may be necessary to insist on local

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<sup>91</sup> *Answers of England and Wales to CMI Questionnaire on Criminal Offences committed on Foreign Flagged Ships*, British Maritime Law Association website <<http://www.bmla.org.uk/>> at 31 October 2006.

<sup>92</sup> *Commonwealth of Australia Constitution Act 1900* (Cth) s51(xxix).

<sup>93</sup> *Polyukhovich v Cth* (War Crimes Act Case) (1991) 172 CLR 501, Mason CJ, Deane, McHugh and Dawson JJ.

<sup>94</sup> *Commonwealth v Tasmania* (Tasmanian Dams Case) (1983) 158 CLR 1 at 101, Gibbs CJ.

<sup>95</sup> *R v Sharkey* (1949) 79 CLR 121 at 123, Latham CJ.

<sup>96</sup> *Trade Practices Act 1974* (Cth).

<sup>97</sup> *Trade Practices Act 1974* (Cth) s52.

<sup>98</sup> *Henjo Investments Pty Ltd v Collins Marrickville Pty Ltd (No 1)* (1988) 79 ALR 83, 95, Lockhart J.

<sup>99</sup> TPA S53(aa).

<sup>100</sup> TPA S4.

registration of cruise lines operating from overseas as a condition of entry to Australian ports to be able to enforce *TPA* provisions on foreign owned vessels.

It may then be possible to enforce a requirement on cruise lines advertising in Australia to disclose the safety standards with which their vessels comply. If this was to occur, Australian consumers will have more information to assist them to make informed decisions about the risks they may face due to the intrinsic dangers in life onboard any ocean vessel. They will also be aware of any possible differences in safety standards and onboard safety requirements. A possible backlash by consumers may be enough of an incentive for all cruise lines to increase their standards to meet those expected by Australian passengers.

Under the *TPA*, owners and operators of the cruise lines can also be prosecuted and fined for false or misleading statements about the quality or standard of service where the representation is made in Australia.<sup>101</sup> The financial impact of such a prosecution may be sufficiently great to encourage full compliance and enforcement of existing international safety conventions by lines that may not have been as well regulated in the past. The full extent of the powers of the *TPA* are outside of the ambit of this paper however this may be an effective use of existing legislation where applicable.<sup>102</sup>

### 5.3 Further amendments to SOLAS

It can take many years for amendments to IMO conventions to be suggested, debated, approved, accepted and to come into force. Generally, a specific percentage of contracting states have to accept provisions before they came into force. In part due to the nature of the need to make timely changes to the safety provisions in *SOLAS* when the need arises, changes were made to the amendment procedure to speed up the acceptance process. Tacit acceptance provisions allow for amendments to enter into force on a particular date unless objections have been received by one third of contracting Governments prior to this time.<sup>103</sup>

Using this process, amendments could be introduced relatively quickly requiring stricter enforcement of current provisions, reporting of incidents occurring at sea to all signatory States, and greater ability for involvement of non-flag States in subsequent investigations. One impediment to such amendments occurring is the need for member states to sponsor and draft the amendment as well as the committees and other members accepting the changes. There is an opportunity for Australia to lead the way in this process. However, these challenges may render the task too difficult or time consuming. If so, individual States may then choose to combat specific problems that arise by introducing their own legislation instead.<sup>104</sup>

## 6. Conclusion

The existing conflict of laws adds confusion to the investigation and prosecution of maritime crime. While the conflict exists, it is also impossible to ensure that all security standards are equal. Further, there is the added difficulty of deciding which jurisdiction's laws should be applied.<sup>105</sup> However, under the current regime jurisdictional conflict will arise regularly. Where there is a choice of forum, parties to a conflict will generally avoid the most complex system,<sup>106</sup> which may increase the appeal of more lenient regimes. To properly regulate the international cruise line industry requires more than mere cooperation between the federal and state divisions of a single country. The inherent nature of the cruise industry requires a cooperative international approach to resolve these issues.

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<sup>101</sup> *TPA S 75AZC (b)*.

<sup>102</sup> See generally K Lewins, 'The Cruise Ship Industry – Liability to Passengers for Breach of s52 and s74 *Trade Practices Act 1974* (Cth)' (2004) 18 *MLANZ Journal* 30 although some aspects of the law have changed since publication of this article.

<sup>103</sup> 'Conventions', International Maritime Organization website <<http://www.imo.org/home.asp>> at 1 February 2007.

<sup>104</sup> PJ Griggs, 'Obstacles to Uniformity of Maritime Law: The Nicholas J Healy Lecture' (2003) 34 *Journal of Maritime Law and Commerce* 191, 200.

<sup>105</sup> LE Teitz, 'From the Courthouse in Tobago to the Internet: The Increasing Need to Prove Foreign Law in US Courts' (2003) 34 *Journal of Maritime Law and Commerce* 97, 99.

<sup>106</sup> Allsop J, 'Australian Admiralty and Maritime Law – Sources and Future Directions' (Lecture in Memory and Honour of the Hon Justice Richard Cooper, Brisbane, 2006) <[http://www.fedcourt.gov.au/how/Richard\\_Cooper\\_lecture.html](http://www.fedcourt.gov.au/how/Richard_Cooper_lecture.html)> at 1 February 2007.

The continuing use of FOC regimes creates an umbrella of suspicion over the industry that will only be raised with improved measures to increase transparency in the actions undertaken by cruise ships. Compulsory and immediate reporting mechanisms and proper enforcement of international conventions must be achieved in order to improve the industry's image.

The economic reward that FOC countries have come to rely on through the income afforded by cruise lines will prove to be a difficult hurdle to overcome in the push for reform. We have already seen that many of these countries have been reticent to apply the full force of existing regulation for fear that it may make their regime less desirable. The increasing number of available FOC regimes will also continue to influence the market.

The estimated 2005 gross economic output generated by cruise lines and their passengers and invested in the US economy was US\$32.4 billion.<sup>107</sup> The economic interest of other coastal states is also likely to be significant. It would be a disappointing outcome if economic incentives prevented the international cooperation required to institute real changes to cruise regulation. Unfortunately, this currently appears to be the case, and it may be that a large scale disaster will have to occur before these economic interests are overcome. However, the families of the victims of onboard crimes would argue that this has already occurred.<sup>108</sup>

The onus is on the coastal states to address the problem. Restriction of access to ports unless certain conditions are met will promote change, so long as the most powerful coastal states all commit to enforcing the restrictions. It is imperative that countries such as Australia, UK and US protect the best interests of their own citizens over the rights and financial interests of foreign owned or operated companies. Unfortunately, until this level of cooperation is achieved passengers such as Ms Brimble will continue to experience cruise nightmares rather than the dreams they thought they had been promised.

While organisations such as the IMO, UN and the CMI react to apparent problems in the current regimes to create uniform legislation, the process from recognition of need to convention takes many years.<sup>109</sup> Already there has been much discussion on the intrinsic problems faced by courts trying to enforce regulation on cruise liners, but without assistance from the more powerful coastal states and the cooperation of the industry itself, the process of implementing change will be prolonged.

If an internationally cooperative solution is not found soon, individual countries may have no choice but to implement their own regulation. If this occurs, a number of countries may claim jurisdiction over an onboard incident, which will only further complicate the issue. In a situation where an Australian citizen is assaulted on a foreign owned vessel at the hands of a US citizen while on the high seas, there is no clear rule as to which government can claim control over the investigation. Considering the interest that the cruise line has in the outcome of the investigation, they should not be relied upon to take responsibility for the scene. To overcome this problem cooperative action must be undertaken by the coastal states as a matter of utmost urgency. Australia is now in a position to lead the way in this approach. Use of the tacit acceptance provisions in SOLAS could see amendments accepted two years after introduction.

Change in the shorter term will require action from the cruise industry itself through self-regulation. However, this will require recognition by the industry of a systemic problem within the current scheme, a view that currently is not forthcoming.<sup>110</sup> The recent acceptance of some responsibility in the death of Ms Brimble by P&O cruises is a positive step.<sup>111</sup> However, change by one company, while encouraging, is not

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<sup>107</sup> *The contribution of the North American Cruise Industry to the US Economy in 2005*, (2006) Prepared for the International Council of Cruise Lines by Business and Economic Research Advisors  
<<http://www.cruising.org/Press/research/Ecoimpact/2005%20Econ%20Impact%20detail.pdf>> at 12 February 2007.

<sup>108</sup> For example see <<http://cruisebrimble.com/index.html>> at 1 February 2007.

<sup>109</sup> PJ Griggs, 'Obstacles to Uniformity of Maritime Law: The Nicholas J Healy Lecture' (2003) 34 *Journal of Maritime Law and Commerce* 191, 200.

<sup>110</sup> *Personal Safety and Security*, Cruise Lines International Association Website <<http://www.iccl.org/policies/personal.cfm>> at 14 February 2006).

<sup>111</sup> *Cruise company offers compo to grieving family*, ABC News Online  
<<http://www.abc.net.au/news/newsitems/200702/s1854162.htm>> at 25 February 2007.

enough. Considering that the defenders of the cruise industry are as staunch in their praise for the organisation as their opponents are against it,<sup>112</sup> it may be a while before any real change is achieved.

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<sup>112</sup> For example see PeltzRD and VJ Warger, 'Medicine on the Seas' (2003) 27 *Tulane Maritime Law Journal* 425.