

Revising Our Laws on the Maritime Slave Trade

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I.	REMNANTS OF THE CLASSIC CHATTEL SLAVE TRADE	422
II.	THE ARGUMENT FOR AN EXPANSIVE DEFINITION OF SLAVERY	423
III.	THE ORGANIZED SMUGGLING OF REFUGEES.....	424
IV.	MARITIME HOSTAGE SITUATIONS INVOLVING VESSEL PASSENGERS OR CREW	426
V.	REVISING U.S. LAWS ON THE SLAVE TRADE	428
	A. <i>Section 1581 Slavery, Peonage, Indentured Servitude</i>	429
	B. <i>Section 1582 Vessels Used for the Slave Trade, Peonage, or Indentured Servitude</i>	432
	C. <i>Section 1583 Enticement into Slavery, Peonage, or Involuntary Servitude</i>	433
	D. <i>A New Section 1584 Attempts and Accessories</i>	433
VI.	CONCLUSION	434

Slavery and the slave trade continue to exist in our time. This Article evaluates and considers the relevance of U.S. laws concerning the maritime slave trade and how they might usefully be adapted to twenty-first century situations. There are three potential areas in which revised maritime slave trade legislation would be of use: (1) in curbing the

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remnants of the classic slave trade, (2) in helping disrupt the organized smuggling of refugees, and (3) in providing jurisdiction over maritime hostage situations involving vessel passengers or crew.

I. REMNANTS OF THE CLASSIC CHATTEL SLAVE TRADE

Most people are unaware that the Atlantic Slave Trade, finally extinguished in the 19th Century, was only one of *two* maritime slave trades operating out of Africa. The “Red Sea and Indian Ocean Slave Trade,” generally Arab in its scope, was originally centered in the Sultanate of Zanzibar, but it survived elsewhere well into the 20th Century.¹

As recently as 1950, one route used for slaving was from Yemen to Mecca, where slaves were brought by ships from the West-African coast.² French sources reported in 1953 that some individuals were duped into making the *haj*, being, transported by truck to Port Sudan or the coast of the Red Sea and on specially constructed *dhow*s across to locations such as Rith, only to be declared illegal pilgrims, thrown into prison, and later sold.³ In 1956, John Laffin attended a slave auction in Djibouti where he found that “[t]he buyers at the auction were dealers from Arabia, who would be transporting their merchandise across the Red Sea for the markets in Jeddah and Medina.”⁴ Laffin also reported that slave traders from Saudi Arabia “made seasonal trips to Dubai and Muscat and brought back slaves in groups of fifty or sixty at a time.”⁵ Similarly, in 1960, men were transported from Abadan to Kuwait by *dhow*, then smuggled into Bahrain where they were sold as slaves.⁶ Even as late as 1971, Dr. Oliver Ransom claimed that African children were still being auctioned off in Red Sea ports.⁷ Slaves were being trafficked from Somalia, Ethiopia, and other parts of Africa, not to mention Asia and Europe.⁸ According to Basil Lubbock, slavers of the early twentieth century

were careful only to take a few slaves at a time, and these, mingled amongst their crew made it very difficult for the cruisers. Often the slaves

1. Samuel Pyeatt Menefee, *The Smuggling of Refugees by Sea: A Modern Day Maritime Slave Trade*, 2 REGENT J. INT'L L. 1, 5 (2003) (footnote omitted).

2. GERALD DE GAURY, ARABIAN JOURNEY AND OTHER DESERT TRAVELS 89 (1950).

3. Menefee, *supra* note 1, at 8; see also SEAN O'CALLAGHAN, THE SLAVE TRADE TODAY 108-09 (1961).

4. JOHN LAFFIN, THE ARABS AS MASTER SLAVERS 4 (1982).

5. *Id.* at 70.

6. O'CALLAGHAN, *supra* note 3, at 122.

7. RONALD SEGAL, ISLAM'S BLACK SLAVES: THE OTHER BLACK DISAPORA 202 (2001).

8. *Id.* at 202.

were run across in genuine fishing boats, disguised as fishermen, and the profits of the dhows were still so attractive that the trade is not dead even at the present day, though it is probable that not more than a hundred or two of slaves for the Arabian market are run across the Straits of Bab-el-Mandeb and the Red Sea every year.⁹

It seems clear that there is some chance that this kind of trade has survived into the twenty-first century. Any revision of U.S. laws dealing with the slave trade should keep this possibility in mind.

II. THE ARGUMENT FOR AN EXPANSIVE DEFINITION OF SLAVERY

It is generally accepted that the earliest multilateral treaties dealing with the slave trade were directed against the institution of “chattel slavery.”¹⁰ The 1919 Convention of Saint Germain-en-Laye, however, was an attempt to secure the “suppression of slavery in *all its forms*,”¹¹ suggesting “an intention to wipe out slavery even when it manifests itself in forms other than chattel slavery.”¹² Similarly, the 1926 Convention to Suppress the Slave Trade continued to broaden the definition of slavery.¹³ Article 1(1) of this treaty defined slavery as “the status or condition of a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹⁴ In considering this convention, Joey Asher has argued:

If the convention was aimed solely at pure slavery, the word “any” would not have been included since chattel slavery was ownership of humans, pure and simple. The use of the word “any” is a significant departure from chattel slavery. The word suggests that a person can be held in servitude or slavery so long as the “employer” engages in *any* of the typical behaviors common to owners. Such behavior could be as simple as keeping a person in place against his or her will.¹⁵

This 1926 definition is followed in large part by the 1957 Supplementary Convention on the Abolition of Slavery, the Slave Trade,

9. BASIL LUBBOCK, *CRUISERS, CORSAIRS & SLAVERS: AN ACCOUNT OF THE SUPPRESSION OF THE PICARROON, PIRATE & SLAVER BY THE ROYAL NAVY DURING THE 19TH CENTURY* 459 (1993).

10. Joey Asher, *How the United States Is Violating Its International Agreements To Combat Slavery*, 8 EMORY INT’L L. REV. 215, 236 (1994).

11. General Act and Declaration of Brussels art. 11, Sept. 10, 1919, 49 Stat. 3027, 2 Bev. 261 (emphasis added).

12. Asher, *supra* note 10, at 237.

13. *Id.* at 238.

14. Convention to Suppress the Slave Trade and Slavery, art. 1(a), Sept. 25, 1926, 60 L.N.T.S. 253.

15. Asher, *supra* note 10, at 239.

and Institutions and Practices Similar to Slavery, which defines a “slave” as “a person over whom any or all of the powers attaching to the right of ownership are exercised.”¹⁶ The Supplementary Convention did not restrict the type of coercion used, and the text of the treaty similarly implied that *all* types of coercion into slavery were equally impermissible, including “any type of persuasive force.”¹⁷ Finally, Article 8(1) of the 1966 International Covenant on Civil and Political Rights reads: “No one shall be held in slavery; slavery and the slave-trade *in all their forms* shall be prohibited.”¹⁸

III. THE ORGANIZED SMUGGLING OF REFUGEES

But what does the slave trade, where humans are sold for a profit and forced into labor, have to do with the modern smuggling of immigrants in the maritime slave trade? . . . [I]t has been suggested that some instances of immigrant smuggling from the Far East are in fact . . . example[s] of the slave trade in action.¹⁹

During the early 1990s, it was estimated that as many as fifty Chinese criminal organizations smuggled tens of thousands of Chinese into the United States for as much as \$20,000 to \$35,000 *per person*.²⁰ In such scenarios, the down-payment was usually made in China, with the remainder paid off over many years by the person smuggled through in virtual slave labour in the garment or restaurant industries.²¹ While conditions upon arrival may have some bearing as to whether these immigrants should be analogized to slaves, what is of prime importance is their treatment during the trip. For transported persons, “the voyage usually involves many months crammed into the hold of an unseaworthy vessel with inadequate toilet and bathing facilities. Paid enforcers maintain brutal control over the passengers and distribute the food, which consists mainly of rice.”²² On another voyage, “crew members

16. Supplementary Convention on the Abolition of Slavery, the Slave Trade, and Institutions and Practices Similar to Slavery, art. 7(a), Sept. 7, 1956, 266 U.N.T.S. 40.

17. Menefee, *supra* note 1, at 21 (quoting Asher, *supra* note 10, at 243).

18. International Covenant on Civil and Political Rights, art. 8(1), Dec. 16, 1966, 999 U.N.T.S. 171, 6 I.L.M. 368 (entered into force on Mar. 23, 1976, and ratified by the United States on June 8, 1992) (emphasis added).

19. Menefee, *supra* note 1, at 14 (citing Samuel Pyeatt Menefee, *The Maritime Slave Trade: A 21st Century Problem?*, 7 ILSA J. INT'L & COMP. L. 495 (2002)).

20. Jill Smolowe, *Where's the Promised Land*, TIME, June 21, 1993, at 29.

21. Paul George, Canadian Sec. Intelligence Serv., *Immigration by Sea to North America: More Golden Ventures?* (Apr. 1994), available at <http://www.csis-scrs.gc.ca/en/publications/commentary/com43.asp>.

22. *Id.*

abandoned a disabled vessel and considered dynamiting it with hundreds of passengers on board.²³

In addition, sexual advantage is often taken of those who are smuggled.²⁴ For instance:

In August, 1993, “one twenty-four-year-old Fujianese who spent four months crossing the Pacific in a freighter said the smugglers withheld food and water from all females who refused to have sex with them,” while Chang notes that in another case, “the crew gave female passengers drinking water spiked with sleeping pills in order to rape them.” In July, 1995, the *Jung Sheng 8* was stopped by the Coast Guard some 800 miles south of Hawaii. On board were 147 illegal Chinese immigrants. “Some of the migrants were beaten and sexually abused by enforcers on board and many suffered from skin and urinary tract infections due to dehydration and unsanitary conditions.”²⁵

According to Iris Chang, crewmen on the JUNG SHENG 8 did not sexually assault only women. Many males, including boys as young as ten, were also victimized. By the time they reached their destination, some of these boys and men were so traumatized that they considered committing suicide.²⁶

As evidenced by the above scenarios, it is clear that the conditions faced by smuggled persons mirror those of slaves. Both slaves and smuggled persons are sold as property for a profit. They endure appalling conditions in transit, and are forced into labor.²⁷ “The slave trade has thus not ended, but rather assumed a new form.”²⁸

Read in the current *expansive* international treaty context of provisions to abolish slavery, it can be argued that the slave trade provisions of the U.S. Code should be revised to cover more than just classic chattel slavery. The United States should ensure that practices such as Chinese emigrant smuggling comes under the ambit of legally proscribed activities.²⁹

23. IRIS CHANG, *THE CHINESE IN AMERICA: A NARRATIVE HISTORY* 380 (2003).

24. *Id.* at 382; see also Gordon Witkin, *One-Way, \$28,000: Why Smuggling Aliens into American Is a Boom Business*, U.S. NEWS & WORLD REP., Apr. 14, 1997, at 41.

25. Menefee, *supra* note 1, at 17-18 (footnotes omitted) (quoting CHANG, *supra* note 23, 382) (citing Witkin, *supra* note 24)).

26. CHANG, *supra* note 23.

27. Menefee, *supra* note 1, at 19.

28. *Id.*

29. *Id.* at 22.

IV. MARITIME HOSTAGE SITUATIONS INVOLVING VESSEL PASSENGERS OR CREW

A more recent suggestion has been that maritime hostage situations involving passengers or crews might be covered by antitrafficking in persons laws.³⁰ Since 1960, in addition to the SANTA MARIA³¹ and the ACHILLE LAURO,³² many ships and ferries have been seized by political insurgents and their passengers held hostage:³³

There is evidence that passenger vessels continue to be targeted by terrorists. On August 25, 1995, Tamil rebels seized the ferry *Irish Mona*, using it as a lure to attract and sink two Sri Lankan naval patrol boats off Mullaitivu. On September 7, 121 of the 144 passengers and crew were released. On January 16, 1996, nine armed Chechen sympathizers hijacked the Panamanian passenger/ro-ro ferry *Avrasya* at Trabzon, Turkey. "The hijackers stated that they had explosives and threatened to blow up themselves and the hostages. They surrendered peacefully after four days with no injuries reported." On May 1 of the same year, a Burmese ferry was hijacked by members of the Knuckayin National Union, who took eleven passengers hostage. These individuals were subsequently released May 9th, after the payment of a multi-thousand dollar ransom. On October 16, 1999, a tourist excursion boat was hijacked by FARC guerrillas, with thirteen male Colombian nationals held for ransom. Haitian police officers seeking asylum in the U.S. hijacked the ferry *Gonive Enfleche* along with its crew and 121 passengers out of Port au Prince on May 16, 2000. Two weeks later, on May 30, the commuter ferry *Maria Estela* was

30. See Samuel Pyeatt Menefee, *Terrorism and the Slave Trade: An Analogy*, in THE NEW REGIME FOR THE SUPPRESSION OF UNLAWFUL ACTS AT SEA (M.Q. Mejia & P.K. Mukherjee eds., forthcoming 2006) (discussing the possibility in connection with multilateral international treaties).

31. See Samuel P. Menefee, *Terrorism, Extortion, and the Cruise Industry*, in ASIS, MARITIME SECURITY MANUAL 25-26 (1990); Samuel P. Menefee, *Terrorism at Sea: The Historical Development of an International Legal Response*, in VIOLENCE AT SEA: A REVIEW OF TERRORISM, ACTS OF WAR AND PIRACY, AND COUNTERMEASURES TO PREVENT TERRORISM 198-201 (Eric Ellen ed., 1987). See generally HENRIQUE GALVÃO, SANTA MARIA: MY CRUSADE FOR PORTUGAL (1961); BETH DAY, PASSAGE PERILOUS (1962).

32. See ANTONIO CASSESE, TERRORISM, POLITICS AND LAW: ACHILLE LAURO AFFAIR 17-43 (1989) (detailing the events of the attack on the ACHILLE LAURO and its effect on international political trends); Samuel Pyeatt Menefee, *Piracy, Terrorism, and the Insurgent Passenger: A Historical and Legal Perspective*, in MARITIME TERRORISM AND INTERNATIONAL LAW 43-68 (Natalino Ronzitti ed., 1990) (characterizing the hijacking of the ACHILLE LAURO as an incident of maritime terrorism). See generally MICHAEL K. BOHN, THE ACHILLE LAURO HIJACKING: LESSONS IN THE POLITICS AND PREJUDICE OF TERRORISM (2004); ACHILLE LAURO—STORIA DI UNE NAVE (1988).

33. These other ships include the LAJU, the DON CARLOS, the HALEHA BARU ADAL, the ILLANA BAY, the IRISH MONA, the AVRASYA, the GONIVE ENFLECHE, and the MARIA ESTELA. See Menefee, *supra* note 30.

commandeered on a voyage from Guatemala to Belize, and five passengers and crew were shot.³⁴

It is even possible that the recent thwarted attack on the SEABOURN SPIRIT off the Somali coast on November 5, 2005, might fall into this category.³⁵

There are even more numerous instances of vessels being captured and their *crews* held for ransom. Those generally familiar with the field will be aware of the maritime depredations of Palestinian extremists,³⁶ Indonesian and Philippine rebels,³⁷ and the Polisario Front.³⁸ However, hostages have also been taken by MPIAC,³⁹ Tamil terrorists,⁴⁰ various Somali forces,⁴¹ the Eritrean People's Liberation Front,⁴² and Nigerian river tribes.⁴³ The vessel seizures in 2005 alone are astonishing:

On February 5, 2005, nine youths from a rival [Nigerian] tribal community were kidnapped and killed after their boat was ambushed. Aech remained

34. *Id.* (footnotes omitted) (citing fas.org, 1996 Anti-Shipping Activity Messages (ASAM) (1996), available at <http://www.fas.org/irp/world/para/docs/ASAM-1996.htm>).

35. *See id.*; Jim Kouri, *Terrorism: Seafaring Somalian Terrorists Attack U.S. Cruise Ship*, THE NAT'L LEDGER, Nov. 6, 2005, http://www.nationalledger.com/artman/publish/article_27261501.shtml?ref=rss; William Lyons, *Pirates Attack Luxury Cruise Ship*, THE SCOTSMAN, Nov. 6, 2005, <http://news.scotsman.com/international.cfm?id=2201042005>; SydneyMorning Herald.com, *Cruise Ship Attackers "Probably Terrorists,"* THE SYDNEY MORNING HERALD, Nov. 7, 2005, <http://www.smh.com.au/news/world/cruise-ship-attackers-probably-terrorists/2005/11/07/1131211973013.html>; WikiNews.org, *Armed Gunmen Attack Cruise Ship off Somali Coast*, Nov. 5, 2005, http://en.wikinews.org/wiki/Armed_gunmen_attack_cruise_ship_off_Somali_coast; WorldNetDaily.com, *Global Jihad: Missile "Embedded in U.S. Cruise ship,"* http://www.worldnetdaily.com/news/article.asp?ARTICLE_ID=47257.

36. These included the February 2, 1974, attack on the VORI, 1975 plans for skin divers to hijack a ship, and rumors that an oil tanker might be hijacked and sunk in the Strait of Hormuz. *See Menefee, supra* note 30.

37. These include the 1975 seizure of the SUEHIRO MARU and the later kidnapping of six Japanese nationals from a fishing boat off Basilan Island, the hijack of a fishing vessel in Tapiatana Bay, seizure of the VIRGIN PEARL and the SEA JOHANNA, the capture of the SALWAH, the KM PELAGI, the PRINCE WARREN, the CHERRY 201, the MARCO POWER and the BINTANG 9. *See id.*

38. These depredations included attacks on an unidentified Spanish trawler in 1977, on the RIO VOUGA, DENEBE, SARITA, and COSTA DE TERRANOVA in 1980, the AIN OUALILI in 1983, and the JAQUINTO in 1985. *See id.*

39. *Id.*

40. These incidents include an attack on the MISEN and the capture of the MO BAN BONG. *Id.*

41. These incidents include attacks on the KWANDA, the *M/V BONSELAL*, the NATASHA I, the BAHARIHNDI, the MAD (or NET) EXPRESS, the BAHARI KENYA, the PRINCESS SARAH, and the BEIRA 9. *Id.*

42. This involved the seizure of the BOLESZLAW KRZYWUST, the CLOVE, and the SB-408. *Id.*

43. Relevant takeovers include the SIR RAPHAEL, two unidentified tugs, the MAERSK SHIPPER, another tug working for Shell Nigeria, and a Danish supply vessel. *Id.*

a center for hostage taking, with officers being taken from the tug *Tri Samudra* on March 12th, near Berhala Island. Twenty-six crewmen on a fishing vessel seized off the Somali coast on the 16th were held for ransom, and another April 10th hijack resulted in a ransom payment and the freeing of seventeen crew from an unidentified LPG tanker. On June 27th, the *Semlow*, under charter by the UN World Food Program, was seized with ten crew and held for a \$500,000 ransom, while in August three fishing vessels and their crews, the *Zhong I 128*, the *Cheng Qing Feng*, and the *Shin Lian Fa 36*, were similarly treated (ransom demands were eventually dropped from \$500,000 to \$50,000 a vessel). The *Ibn Batouta* was commandeered on September 26th, the *Panagia* was seized on October 18th, and the *San Carlo* met the same fate on October 20th. Some sources linked Abu Sayyaf to the March 30th hijack of the tug *Bonggaya 91* and the barge *Bonggaya 90* and the kidnap of part of their crew off Sabah, although later developments indicated that it was Jamaah Islamiyah which had set a \$790,000 ransom for the release of the missing men.⁴⁴

Like passengers, vessel crew may be subject to being held as hostages more often than is generally realized, with the most recent incidents occurring in the waters around Aech, off the coast of Somalia, in the Nigerian delta region, and in the Philippine archipelago.⁴⁵

Could those passengers or seafarers who are held hostage be considered to be slaves? Granted, captive passengers and crew are not bought and sold, per se, but nonetheless could be considered as individuals acquired for "exchange." The conventions do not specifically require the transfer of money or goods for the individuals in order for slavery to be involved. Bartering, even for an explicit or implicit "safe passage," is just as germane to the rubric of slavery as would be a person's sale for \$5,000 or a puncheon of rum.⁴⁶ Again, using the current *expansive* international treaty context of provisions to abolish slavery, the slave trade provisions of the U.S. Code could be revised to include not only political, but even piratical hostage situations.

V. REVISING U.S. LAWS ON THE SLAVE TRADE

Let us now turn to the current moribund laws dealing with the maritime slave trade codified at 18 U.S.C. chapter 77.⁴⁷ The Historical and Revision Notes for this chapter call for its revision "at an opportune

44. *Id.*

45. *Id.*

46. *See id.*

47. 18 U.S.C. ch. 77 (2000).

time for the same reasons given with respect to chapter 81, ‘Piracy and Privateering.’”⁴⁸ The notes to chapter 81 state:

In the light of far-reaching developments in the field of international law and foreign relations, the law . . . is deemed to require a fundamental reconsideration and complete restatement, perhaps resulting in drastic changes by way of modification and expansion. . . . It is recommended, however, that at some opportune time in the near future, the subject . . . be entirely reconsidered and the law bearing on it modified and restated in accordance with the needs of the times.⁴⁹

The opportune time has come. The chapter 77 we now possess is a historic relic of our own national struggle against the African Slave Trade. As has been previously suggested, “a revision of 18 U.S.C. [chapter] 77 would . . . clarify the meaning of the statutes, [and] . . . make law dealing with the maritime slave trade more directly responsive to the events occurring on today’s oceans.”⁵⁰ It would not be difficult to alter the Code’s eight provisions and to recast them into a group of four laws which would more accurately address the modern slave trade⁵¹ and better conform U.S. law to modern international law.⁵² The following subparts discuss how such changes might look.

A. Section 1581 Slavery, Peonage, Indentured Servitude

Currently, § 1581 reads:

Peonage; obstructing enforcement

- a. Whoever holds or returns any person to a condition of peonage, or arrests any person with the intent of placing him in or returning him to a condition of peonage, shall be fined under this title or imprisoned not more than 20 years, or both.
- b. Whoever obstructs, or attempts to obstruct, or in any way interferes with or prevents the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).⁵³

A *new* § 1581 could subsume several of the current Code sections within it, as well as eliminating the poor drafting of the old Chapter 77. Consider the following new construction:

48. *Id.* (Historical and Revision Notes).

49. 18 U.S.C. ch. 81 (1988) (Historical and Revision Notes).

50. Menefee, *supra* note 19, at 509; Menefee, *supra* note 1, at 23.

51. Menefee, *supra* note 1, at 23.

52. *Id.*

53. 18 U.S.C. § 1581 (2000).

- a. Whoever entices, persuades or induces, kidnaps or carries away, sells, receives, holds, or detains arrests, transfers, delivers, or transports any person with the intent of placing the person in, keeping, or returning the person to a condition of slavery, peonage, or indentured servitude shall be fined under this title or imprisoned not more than ___ years, or both.⁵⁴
- b. Whoever obstructs, or attempts to obstruct, or in any way interfere[s] with or prevent[s] the enforcement of this section, shall be liable to the penalties prescribed in subsection (a).⁵⁵

This construction would alleviate several problems. In the current § 1581, a person who returns an individual to peonage, however inadvertent or innocent their actions may be, are liable to fine or imprisonment. The new wording would require a *mens rea* and, by including slavery and indentured servitude, would provide a more comprehensive solution to the problem.⁵⁶ Currently, § 1584 deals only with sale *into involuntary servitude* and states:

Whoever knowingly and willfully holds to involuntary servitude or sells into any condition of involuntary servitude, any other person for any term, or brings within the United States any person so held, shall be fined under this title or imprisoned not more than 20 years, or both.⁵⁷

This provision could be folded into the new § 1581. Similarly, as now drafted, § 1585, which covers the seizure, detention, transportation or sale of slaves,⁵⁸ only applies to citizens or residents of the United States; this definition would allow foreigners to engage in slaving activities.

54. Menefee, *supra* note 1, at 23.

55. *Id.*

56. Menefee, *supra* note 19, at 505; *cf.* 18 U.S.C. § 1581.

57. 18 U.S.C. § 1584 (2000).

58. 18 U.S.C. § 1585 (2000). Section 1585 currently reads:

§ 1585. Seizure, detention, transportation or sale of slaves

Whoever, being a citizen or resident of the United States and a member of the crew or ship's company of any foreign vessel engaged in the slave trade, or whoever, being of the crew or ship's company of any vessel owned in whole or in part, or navigated for, or in behalf of, any citizen of the United States, lands from such vessel, and on any foreign shore seizes any person with intent to make that person a slave, or decoys, or forcibly brings, carries, receives, confines, detains or transports any person as a slave on board such vessel, or, on board such vessel, offers or attempts to sell any such person as a slave, or on the high seas or anywhere on tide water, transfers or delivers to any other vessel any such person with intent to make such person a slave, or lands or delivers on shore from such vessel any person with intent to sell, or having previously sold, such person as a slave, shall be fined under this title or imprisoned not more than seven years, or both.

Id.

Expanding the code to include land and air transportation would also be appropriate.⁵⁹

Service on vessels in the slave trade, a topic covered by the current § 1586, could also be rolled into a revised § 1581.⁶⁰ Two problems appear to relate to § 1586 as now drafted: the class of those persons subject to this section, and the lack of any requirement of intent.⁶¹ There is no apparent reason to limit the statute's application to U.S. citizens or residents. Similarly, there is no need to criminalize the activity of voluntarily serving on board a slave ship if one lacks the necessary *mens rea*.⁶² "Particularly with the advent of hidden compartments, it is not inconceivable that some members of the crew might not be in on a smuggling racket, and it thus seems unfair to make their mere presen[ce] on board criminal."⁶³

As now drafted, § 1587, dealing with possession of slaves aboard a vessel, relates exclusively to the person in charge of the ship.⁶⁴ Additionally, peonage and involuntary servitude are not considered, and it is unclear whether locations outside American jurisdiction fall within the statute's ambit.⁶⁵ A redrafted § 1581 could cover these concepts. While § 1588 dealing with transportation of slaves from the United States⁶⁶ might appear to be the flip side of § 1585, which covers events on

59. Menefee, *supra* note 19, at 507.

60. See 18 U.S.C. § 1586 (2000). The current § 1586 reads:

§ 1586. Service on vessels in slave trade

Whoever, being a citizen or resident of the United States, voluntarily serves on board of any vessel employed or made use of in the transportation of slaves from any foreign country or place to another, shall be fined under this title or imprisoned not more than two years, or both.

Id.

61. Menefee, *supra* note 19, at 507.

62. *Id.*

63. *Id.*

64. See 18 U.S.C. § 1587 (2000). Section 1587 now reads:

§ 1587. Possession of slaves aboard vessel

Whoever, being the captain, master, or commander of any vessel found in any river, port, bay, harbor, or on the high seas within the jurisdiction of the United States, or hovering off the coast thereof, and having on board any person for the purpose of selling such person as a slave, or with intent to land such person for such purpose, shall be fined under this title or imprisoned not more than four years, or both.

Id.

65. 18 U.S.C. § 1587.

66. See 18 U.S.C. § 1588 (2000). That section reads as follows:

§ 1588. Transportation of slaves from United States

Whoever, being the master or owner or person having charge of any vessel, receives on board any other person with the knowledge or intent that such person is to be carried

foreign shores, it may not include the trafficking of slaves inside the United States. The key question is whether “any such place” means *any* place besides the point of transfer for further transportation, or whether it refers to a place other than “any place within the United States.”⁶⁷ Again, this problem could be covered in a redrafted § 1581.

B. Section 1582 Vessels Used for the Slave Trade, Peonage, or Indentured Servitude

The current § 1582 of the Code reads:

Whoever, whether as master, factor, or owner, builds, fits out, equips, loads, or otherwise prepares or sends away any vessel, in any port or place within the United States, or causes such vessel to sail from any such port or place, for the purpose of procuring any person from any foreign kingdom or country to be transported and held, sold, or otherwise disposed of as a slave, or held to service or labor, shall be fined under this title or imprisoned not more than seven years, or both.⁶⁸

A new § 1582 could be redrafted to read as follows:

Whoever builds, fits out, equips, loads or otherwise prepares, sends away, or insures a vessel, vehicle or aircraft with knowledge that it is to be used for the transportation, sale, or disposal of slaves, peons, or indentured servants, shall be fined under this title or imprisoned not more than seven years, or both.⁶⁹

As it now exists, § 1582 has three major problems: the persons covered, the required geographical nexus for their crimes, and the section's limitation to maritime situations. A better strategy would be to concentrate on the *mens rea* of the persons involved in smuggling or trafficking, rather than on the person's particular title or designation, and to expand geographical coverage to permit a more universal jurisdiction.⁷⁰

It is preferable to have overlapping jurisdiction rather than to find that some criminal conduct is not covered, especially since an expansive

from any place within the United States to any other place to be held or sold as a slave, or carries away from any place within the United States any such person with the intent that he may be so held or sold as a slave, shall be fined under this title or imprisoned not more than 10 years, or both.

Id.

67. Menefee, *supra* note 19, at 508.

68. 18 U.S.C. § 1582 (2000).

69. Menefee, *supra* note 19, at 506.

70. *Id.* at 505.

jurisdiction does not *mandate* prosecution in all cases.⁷¹ It also makes sense to include vehicles and aircraft as potential modern sources for the transport of slaves.⁷²

C. Section 1583 Enticement into Slavery, Peonage, or Involuntary Servitude

Section 1583 now reads:

Enticement into slavery

Whoever kidnaps or carries away any other person, with the intent that such other person be sold into involuntary servitude, or held as a slave; or

Whoever entices, persuades, or induces any other person to go on board any vessel or to any other place with the intent that he may be made or held as a slave, or sent out of the country to be so made or held—

Shall be fined under this title or imprisoned not more than 20 years, or both.⁷³

A suitable redraft for this section would be:

- a. Whoever kidnaps or carries a person away with the intent that he be made a slave, peon, or involuntary servant; or
 - b. Whoever entices, persuades, or induces a person to board a vehicle, vessel or aircraft or to travel to any location with the intent that the person be made a slave, peon, or involuntary servant
- shall be fined under this title or imprisoned not more than 20 years, or both.⁷⁴

D. A New Section 1584 Attempts and Accessories

This *new* article has no parallel in the current Code. It would include *attempts* and *accessories* within the ambit of the law and could read:

Any attempt to engage in an activity or activities made criminal under §§ 1581, 1582, or 1583, or any accessory to any of these crimes shall be liable to a fine under this title or imprisonment for not more than ___ years, or both.

71. *Id.* at 505-06 (quoting Samuel Pyeatt Menefee, *Boxing the Compass: A Review of Contemporary Laws of Piracy and Their Legal Framework*, Address at the Semi-Annual MARLO Shipping Conference (Dec. 5, 1996)).

72. *Id.* at 506.

73. 18 U.S.C. § 1583 (2000).

74. Menefee, *supra* note 19, at 506.

VI. CONCLUSION

If the smuggling of refugees by sea and the holding of maritime hostages are indeed modern forms of the maritime slave trade, a *revision* of chapter 77 of the Code is clearly in order. This is not something that will happen by itself; it will require the organization and efforts of interested parties. The draft articles offered herein are merely a *draft*, subject to revision or replacement. What *is* important, however, is that this dead chapter of the Code can be restored to usefulness in the ongoing struggle against human trafficking. Congress is unlikely to act on its own. Therefore, those organizations with an interest in utilizing this approach to strengthen the legal framework against trafficking must collaborate with others in the field to make a new chapter 77 a *reality*.