Introduction

The fast growing cruise industry and its luxury ships, the largest passenger conveyances in the world, are attractive targets for terrorists. In 2010, 14.8 million people worldwide travelled on cruise ships, 9.7 million of whom cruised from more than 30 US ports on more than 4,200 voyages. The average passenger capacity of the 176 cruise ships departing annually from US ports is 2,272 plus an average of 1,082 crew members; the new 5,400 passenger mega cruise ships include 2,077 crew for an onboard total of 7,477 persons per cruise.1

As chillingly identified in a 2008 RAND Corporation report, there are several reasons why cruise ships are potential terrorist-act targets.

“[S]ea-based terrorism constitutes a viable means of inflicting ‘mass coercive punishment’ on enemy audiences. Cruise ships ... are especially relevant in this regard, largely because they cater to large numbers of people who are confined in a single physical space (which, like aircraft, makes them ideal venues for carrying out assaults aimed at maximizing civilian casualties), sail according to set and publicly available schedules (which provides transparency in pre-attack planning), are characterized by variable standards of dock-side security ..., remain vulnerable to post-departure interception (at least compared to civil aviation), and, ... because cruise ships cater to rich, middle-class American and European tourists, these vessels provide the type of high-prestige, iconic target that would likely resonate with extremist ... intent and elicit considerable media attention if decisively struck.”2

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Cruise ship terrorism could cause both economic loss as well as the loss of life. Regardless of the method of terroristic violence, an attack on a cruise vessel is likely to produce significant economic damage. For example, an attack while a cruise ship is docked in a major US commercial port could cause “mass economic destabilization” by temporarily “disrupting the mechanics of the contemporary ‘just enough, just in time’ cargo freight trading system ... trigger[ing] vast and cascading fiscal effects...”\(^3\) Moreover, a successful attack on a cruise vessel could cause even more serious long-term economic damage by resulting “... in decreased demand for cruise vacations, affecting a multibillion dollar industry.”\(^4\) However, the potential loss of life in a terrorist attack on a cruise ship is the greater fear – and the number of lives lost may vary depending on the method of attack. For example, parasitic bombings, ramming attacks with explosives, and biological attacks are estimated to cause a greater expected loss of life than other methods, such as boarding a cruise vessel and shooting hostages. The threat of terrorism and the safety vulnerabilities specific to cruises will influence the future development of the cruise industry’s security policies and programmes.\(^5\)

This article demonstrates the attractiveness of cruise ships as terrorism targets and identifies existing strengths and weaknesses of the legal framework guiding maritime security practices and policies. First, it defines key terms necessary to understanding acts of terrorism, distinguishes terrorism from piracy, and provides examples of past incidents of terrorism targeted at cruise ships. Then, the threat, vulnerability, and consequences of a terrorist attack are analysed. Last, the legal implications of a terrorist attack are evaluated.

### Terrorism Explained

**What is terrorism?**

Terrorism is a term used sweepingly to describe many types of acts. In discussing the threat terrorism poses to the international community, the United Nations General Assembly described terrorism as criminal acts with political purposes intended or calculated to provoke a state of terror in the general public, a group of persons, or particular persons. Such acts are uniformly considered unjustifiable, regardless of the political, philosophical, ideological, racial, ethnic, religious or other characteristics presented as the provocation.\(^6\) In 2004, the US Government Accountability Office defined terrorism as politically motivated violence to coerce a government or civilian population.\(^7\) The Federal Bureau of Investigations defines terrorism as the unlawful use of force or violence against persons or property to intimidate or coerce a government or civilian population for political or social objectives.\(^8\) Consistent components of these definitions include conduct by an actor with a deliberate intent to destroy through violent means\(^9\) and with a political motivation.

\(^3\) Chalk at 25. Port security remains a serious issue. For example, in the five years following the 9/11 attacks, “various audits carried out at the federal level have shown that while Washington has invested upwards of $18 billion in safeguarding the nation’s airports from terrorist attack, only $630 million has been allocated for augmenting security at major maritime terminals.”

\(^4\) GAO at 18.

\(^5\) GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.18.


\(^7\) GAO, ‘Actions Needed to Improve Force Protection for DOD Deployments’, p.4-5.

\(^8\) http://www.terrorism-research.com/, last visited 10/16/11.

\(^9\) GAO, ‘DHS Progress and Challenges in Key Areas of Port Security’, p.3.
The risk management framework of the Department of Homeland Security (DHS) National Infrastructure Protection Plan (NIPP) identifies three elements that must be considered when analysing the risk of terrorism: threat, vulnerability, and consequence. Specifically, the NIPP aims to deter threats, mitigate vulnerabilities and minimise consequences. For the purposes of this article, a threat is the likelihood that a particular asset, system, or network will suffer an attack given the intent and capability of an adversary. Vulnerability is defined as the likelihood that a characteristic or flaw of the target’s design, location, security procedures, process, or operation makes it susceptible to destruction, incapacitation, or exploitation. Negative effects on public health and safety, the economy, public confidence in institutions, and the functioning of government are consequences resulting from a terrorist attack.

Terrorism versus piracy

The media attention given to recent acts of piracy highlights the value in addressing the difference in meaning between the terms “piracy” and “terrorism.” According to 1982 Law of the Sea Convention, Article 101, piracy consists of:

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

- Any act of voluntary participation in the operation of a ship or of an aircraft with knowledge of facts making it a pirate ship or aircraft; or

- Any act of inciting or of intentionally facilitating an act described within the above bullet points.

Analysis of the 1982 Law of the Sea Convention states that political acts were purposely excluded from the description of piracy. The primary distinction between a definition of piracy and terrorism is the private versus political motivation for violence. In 2005, pirates off the coast of Somalia attacked the Seabourn Spirit. The pirates fired rifles and rocket propelled grenades at the cruise ship. More recently, in 2009, an Italian cruise ship, the MSC Melody, was attacked 500 miles off Somalia. Also in 2009, the cruise ship Balamoral suffered a piracy scare upon radar detection of two small watercrafts following the

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10. DHS, National Infrastructure Protection Plan, 2009, Executive Summary, pg. 1
12. The Captain and the onboard ship security initiated evasive measures and successfully prevented the pirates from boarding the ship. Evasive measures included the Captain speeding up and navigating the ship in a deflective manner while onboard security participated by using a high-tech “sonic cannon” that emits a high-pitched siren sound. Motter, ‘Cruise Security Update – 2007’ http://www.cruisemates.com/articles/humop/cruiseshipsecurity2007.cfm, last visited October 27, 2011
13. The pirates fired automatic weapons and attempted to place a ladder on board the cruise ship. The cruise ship’s private security guards returned fire and thwarted their measures. The head of the cruise line stated he hired the Israelis for cruises on the pirate filled waters because they were the best-trained security agents. Cruise security is a popular field of work for young Israelis recently discharged from the military. http://www.foxnews.com/story/0,2933,517955,00.html
ship while in Somalia waters. These examples provide evidence that cruise ships may be in danger of a pirate attack; however, bulk, crude and chemical tankers, along with container ships are more desirable targets for pirates and experience the greatest number attacks.

According to the Director General of the UK Chamber of Shipping, piracy costs the world economy 7 billion dollars annually. Piracy depends on the shipping industry for this profit. Thus, generally, acts of piracy eschew attention so that shipping will continue and the attack methodology will remain sustainable. In contrast, acts of terrorism are designed to attract as much publicity and inflict as much damage as possible. Additionally, when a terrorist attack occurs, both the victims and public are surprised. The shock value of a terrorist attack inflicts psychological damage. Again, a contrast between terrorism and piracy is that despite the atrocity of a pirate attack, if a ship is sailing through known “pirate waters”, the public are not really surprised upon learning of an attack. Moreover, just as a traveller is expected to know when he or she is travelling to a dangerous destination, the same expectation exists for a traveller who cruises through dangerous waters.

A final concern about piracy and terrorism is the possibility that terrorists might fund pirate activity. Despite this possible linkage, under current law, piracy and terrorism are two distinct crimes. Grouping piracy with terrorism may seem logical based on a superficial analysis, but the split between the political and private motivation of the acts provides a critical distinction. Therefore, the remainder of this article will specifically discuss cruise ship terrorism in the context of a politically motivated unexpected act of violence toward a cruise ship.

Prior Acts of Terrorism

An examination of cruise ship history provides examples of deliberate violent acts undertaken for political reasons that can be characterised as terrorism. In 1961 a Portuguese rebel group captured the cruise ship Santa Maria to protest the dictatorship in place in Portugal. In 1985, a group of Palestinian radicals hijacked the Achille Lauro. After taking control of the ship, the hijackers demanded the release of 50 Palestinian prisoners in Israeli custody. In 1998, the City of Poros, a Greek passenger ferry, suffered a terrorist attack. The attackers stormed the ship with machine guns and grenades. Nine people were killed and 98 injured. Two attackers were arrested and convicted for the violence.

14. Ultimately, the cruise ship called for a US Navy escort and no attack was launched. http://www.dailymail.co.uk/news/article-1159564/Terror-1-200-Britons-Somali-pirates-rocket-launchers-attack-cruise-ship.html
16. Excerpts from RAND 2008 pg. 30-31
17. In discussing the Seabourn Sun incident, the Captain has stated that he was in error going so close to the Somalia shoreline given the piracy reports. Motter, ‘Cruise Security Update – 2007’
18. During the attack, the ship’s third mate was killed. The attack ended when US Navy vessels surrounded the Santa Maria forcing the rebels to surrender.
19. The attackers demands were ignored. Subsequently, the hijackers killed an American passenger. Ultimately, the hijackers surrendered in exchange for a promise of free passage. After the hijackers boarded an airplane to escape, US Navy fighters intercepted the plane and forced it to land. The incident aboard Achille Lauro brought attention to the vulnerability of cruise ships to acts of terrorism. Most historical and current discussions about terrorism directed at cruise ships include a reference to Achille Lauro because it provides an example of an act of violence committed for a political purpose that resulted in the death of a passenger onboard a cruise ship.
20. The attackers stormed the ship with machine guns and grenades. Nine people were killed and 98 injured. Two attackers were arrested and convicted for the violence.
were associated with Abu Nidal Organisation (ANO), a terrorist organisation widely known for deadly attacks against Western, Palestinian, and Israeli targets.21

More recently, in 2005, a plot to attack Israeli cruise ships off the Turkish Mediterranean coast was discovered. The plot was exposed after a bomb detonated prematurely.22 One attacker was arrested and admitted he intended to attack a cruise ship. Allegedly, the plan was to slam a speedboat packed with explosives into a cruise ship carrying tourists. The attacker stated that his associates were still at large and would carry out an attack in the future.23 The attacker and associates to whom he referred are members of al-Qaeda.24

The failed 2005 attack off the Turkish Mediterranean coast highlights the vulnerability of modern cruise ships and other ships of similar size to small vessel waterborne attacks. In 2000, al-Qaeda operatives launched a suicide attack on the USS Cole, a navy destroyer, by ramming a small boat packed with explosives into the side of the ship.25

According to the 2008 RAND Report, other methods of attack to which cruise ships are vulnerable include: hijacking a cruise ship and its passengers, as exemplified by the Achille Lauro; stand off attacks with heavy artillery, similar to the method of attack employed by pirates; sinking a ship with a submersible parasitic device, (for example, deploying divers to attach a high explosive device to the hull of the cruise ship); exploding a bomb on board a ship, perhaps by a suicide bomber; and, executing a biological attack on a ship’s food or water supply.26 The potential consequences of terrorism to cruise ships in or near US waters could extend to temporary port closures, which would significantly impact the US economy.27

Terrorist attacks on cruise ships have occurred only sporadically throughout history. Even so, a cruise ship’s highly iconic representation of Western materialism and mostly Judeo-Christian passenger manifest makes cruise ships an attractive target because of the potential loss of life and psychological impact.28 Attacking a cruise ship could also economically impact the cruising industry and, global trade.29

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21. In the 1980’s the ANO was viewed as one of the world’s most dangerous terrorist organisations. At the time of the attack, the ANO had been on the US list of terrorist organisations for more than twenty years. Presently, some experts say the group is inactive and no longer a threat. http://www.cfr.org/israel/abu-nidal-organization-ano-aka-fatah-revolutionary-brigades-revolutionary-organization-socialist-muslims/p9153, (last visited October 2, 2011)


25. The attack occurred while the destroyer was refuelling in the port of Aden. Seventeen sailors were killed and forty were injured. http://www.miamiherald.com/2011/10/12/2450624/navy-marks-11th-anniversary-of.html


Vulnerability and Threat

**Vulnerability**

In comparison to other modes of travel, specific features of cruise vacations make them vulnerable to acts of terrorism. For example, public availability of information regarding the cruise ship’s itinerary allows analysis of the easiest time and place to transfer explosives or operatives to the ship. The itinerary provides information on when a ship may be susceptible to an attack while at sea. Additionally, unique to cruise ships, the practice of gathering on deck before departing port makes passengers potential targets for weapons such as rocket propelled grenades, missiles, shoulder launched missiles, and sniper rifles.

A lack of intense baggage screening, another aspect of cruise vacations, makes cruise ships vulnerable. The cruise ship baggage scanning process is not as rigorous as that used in commercial aviation. Also, cruise ships dock in, and employ workers from, low wage countries where service employees may be more susceptible to bribes and do not undergo comprehensive background checks. Cruise ships are also often docked in a given port for up to a full day or more, leaving the ship exposed and vulnerable to a watercraft assault.30

Cruise ship vulnerability varies with the method of attack. Cruise ships are designed and built to prevent the vessel from sinking due to an accidental hull breach. The hull is double lined and most interior compartments are watertight. Sinking a cruise ship would require an understanding of the cruise ships structural integrity and several highly powerful bombs. As such, a cruise ship’s vulnerability to explosions is very low.

A cruise ship attacker might also choose to attach a mine or other parasitic device to the hull of the ship. Attaching a parasitic device to the hull of the ship would be extremely difficult to accomplish while the ship is moving because of currents and undertow. Similarly, attaching a device to the hull while a ship is in port would require considerable training and skill due to the need to move through a busy port undetected. Causing sufficient damage with mines or parasitic devices to sink a cruise ship would be difficult, and if a success, in shallow ports, the ship would settle into the seabed. Thus, the vulnerability of cruise vessels to mines or parasitic device is low.

Skill would be required to hit a cruise ship at an appropriately weak point in the vessels design, but if executed effectively such an attack would cause extensive damage. A small boat ramming into a cruise ship has a far greater prospect of causing damage than other explosion methods.31 Therefore, vulnerability from a small craft laden with explosives is high.

Other less dramatic methods of attack include bombing locations on a cruise ship where passengers congregate,32 taking hostages, committing random murder, and biological assaults on ship’s ventilation system or food. The number of people on the vessel increases vulnerability to on-board bombings, hijackings, and food or water contamination.

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Threat

Based on vulnerability, the threat to cruise ships is high for on-board bombs, standoff artillery, small-vessel-ramming attacks, and food or water contamination. In contrast, the threat is low that a cruise ship with passengers will be hijacked. Use of a parasitic bomb to breach the hull is the least likely of cruise ship terrorist attack scenarios.33

The level of threat is also affected by the difficulty of carrying out an attack. Some methods of attacks are more easily achieved than others. Use of an on-board bomb requires skills to construct the explosive as well as an attacker willing to transport it onto the ship. Use of parasitic bombs requires the specialised military skills of underwater combat techniques to navigate under the target ship. Any attack involving standoff artillery, in the absence of sophisticated self-aiming weapons, requires skill to accurately fire a weapon. Similar skills and capabilities would be needed to hijack a crew and passengers. Ramming a ship with explosives or contaminating food or ventilation requires basic military training to develop the device or contaminant and, again, a willing attacker.

Another influence on the level of threat is the existence of security measures. Post 9/11, international, local and federal regulatory bodies have implemented policies to increase port security. In 2002, the International Ship and Port Facility Security Code (ISPS Code) was updated to include special measures to enhance maritime security.34 Requirements of the ISPS Code extend to both cruise ships and port operators.35 State law requires seaports to develop and maintain local-level operational security profiles that meet the legislative standards.36 Federally, Title 33, Part 120 of the Federal Code of Regulations, Security for Passenger Vessels and Passenger Terminals, provides for standard procedures to be implemented by the Coast Guard and Customs and Border Protection while ships are in port.37 The US Coast Guard also enacted Operation Neptune Shield, under which it provides escorts to cruise ships and patrols port facilities.38

Federal legislation has also been implemented to promote security procedures in ports. The Maritime Transportation Security Act (MTSA), 2002, requires vulnerability assessments for

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34. The ISPS Code is Chapter XI-2 of the International Convention for the Safety of Life at Sea (SOLAS). The special measures to enhance maritime security include: port facilities to assess and develop port facility security plans, as well as controlling delay, detention, restriction, or expulsion of a ship from a port.
35. GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.28.
36. For example, Florida legislation passed in 2005–2006 enhanced port security regulations to include drug smuggling and terrorism. As a result, Florida has been referred to as “the most secure port system in the United States.” http://www.fdle.state.fl.us/ (See “A-Z Index” then “Seaport Security”), (last visited May 10, 2011)
37. 33 CRF 120: “Level 3” security measures were implemented immediately after 9/11. Level 3 security measures include: screening all passenger baggage, carry-on luggage, ship stores and cargo; intensified screening of passenger lists and passenger identification; close coordination between the US Immigration and Naturalization Service (INS) and other federal agencies; restricting access to any sensitive vessel areas; implementing onboard security measures to deter unauthorised entry and illegal activity; requiring all commercial vessels to give 96 hours notice before entering US ports; and maintaining a 100-yard security zone around cruise ships. http://content2.cruiseport.com/NewsReader.aspx?AgId=678&news=453, (last visited May 10, 2011)
38. In 2008, the US Coast Guard did not meet its requirement for the number of ships escorted. Other measures of protection in place through Operation Neptune Shield are security zones surrounding cruise ships; waterborne, airborne, and shoreside patrols of critical infrastructure; boarding of ships to verify submitted information, and acting on intelligence. GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.14, 22.
port facilities and vessels, security plans to mitigate identified risks, development of a Transportation Worker Identification Credential (TWIC), and a process to assess foreign ports from which vessels depart for voyages to the US.\textsuperscript{39,40} The SAFE Port Act, passed in 2006, amended MTSA and codifies the Container Security Initiative and Customs-Trade Partnership Against Terrorism, which creates new programmes and initiatives for seaport security.\textsuperscript{41,42,43} Based on powers the US Coast Guard have in the SAFE Port Act, the International Port Security Program was developed.\textsuperscript{44} Under this programme, the US Coast Guard reviews conditions at foreign ports and recommends actions to improve anti-terrorism measures in accordance with MTSA.\textsuperscript{45,46} The most recent cruise security legislation is the Cruise Vessel Safety and Security Act, enacted in January 2010. The Cruise Vessel Safety and Security Act requires better communication between cruise lines and federal agencies.\textsuperscript{47}

In sum, policies in place require additional security procedures and as a result and have reduced many threats of terrorism. Persons can no longer access ports without a purpose. Activities within ports are closely monitored. A ticket is required to access a cruise ship. Some degree of scrutiny is given to passengers purchasing tickets for cruise vessels. Baggage is scanned once on board cruise vessels. A mandatory security zone while in port surrounds cruise ships that other vessels cannot breach. Cruises receive Coast Guard escorts in and out of ports. Yet, as described above, cruise ship vulnerabilities to terrorism still exist. Enactment and enforcement of stricter security policies is crucial to reducing the continuing threat of terrorism to cruise ships.

\textsuperscript{39} Hoverter, p.355.
\textsuperscript{40} Reportedly, MTSA faces challenges related to a current lack of uniform standards for inspection and risk assessment, ineffective information sharing among relevant parties, and limited resource coordination. GAO, 'Varied Actions Taken to Enhance Cruise Ship Security', p.4.
\textsuperscript{41} GAO, 'Varied Actions Taken to Enhance Cruise Ship Security', p.4.
\textsuperscript{42} GAO, 'The SAFE Port Act and Efforts to Secure Our Nation's Seaports', p.5.
\textsuperscript{43} Reportedly, challenges exist due to resource constraints in expanding the speed and scope of activities. Under the SAFE Port Act, the US Coast Guard is required to conduct inspections of maritime facilities at least twice yearly to verify the effectiveness of facility security plans. At least one of these inspections is to be conducted without advance notice. Over 1,900 inspections were performed between 2006 and 2008. As a result of those inspections, 347 deficiencies were identified. The SAFE Port Act requires the US Coast Guard to perform inspections of cruise ships entering US ports. A risk-based targeting process is used, so that ships that have not been inspected in the prior 12 months are subject to inspection upon arrival. Since enactment of the SAFE Port Act the US Coast Guard has met most of the inspection standards. Exceptions to achieving the standards have occurred when inspections were conducted but results were not recorded, and when scheduled inspections were delayed because of the need for a higher priority inspection. The SAFE Port Act also requires: inter-agency operational centres through which agencies meet to organise the security needs of selected ports; an implementation schedule and fee restrictions on TWIC; 100 percent scanning for all containers by 31/12/2007; and additional data for CBP for targeting cargo containers for inspection. The SAFE Port Act also requires security measures on board the ships to be re-evaluated every three years.
\textsuperscript{44} GAO, 'Varied Actions Taken to Enhance Cruise Ship Security', p.4.
\textsuperscript{45} GAO, 'Varied Actions Taken to Enhance Cruise Ship Security', p.24.
\textsuperscript{46} Effectiveness of the International Port Security Programme has been hampered because of sovereignty concerns of other countries about allowing inspections. Foreign countries have also shown reluctance due to the frequency of visits the Coast Guard makes to the ports. Unfortunately, the US Coast Guard’s ability to take actions beyond information sharing, to build and enhance security has been limited because of resource constraints.
\textsuperscript{47} The Cruise Vessel Safety and Security Act also establishes a structure for interaction among the cruise industry, Federal Bureau of Investigation, and US Coast Guard for certain types of crimes, and establishes a programme to train crew members in crime prevention, detection, evidence preservation, and reporting criminal activities in international waters. Ships must have at least one crew member on board who is trained by the US Coast Guard to handle cruise ship crimes. Cruise Vessel Security and Safety Act, 46 USC. §101 (2010)
Even with currently improved security, the enhancements can be viewed negatively. For example, not all bags are scanned. Any passenger with a ticket has access to the area of the port in which the cruise ship is located. The level of scrutiny directed toward commercial aviation passengers is not given to cruise ship passengers. Mandatory security zones around cruise ships are not always enforced. Coast Guard escorts are not always provided. While the body of law currently in place is a step in the right direction, it is not sufficient. More stringent security regulations are needed, with effective enforcement, to minimise the threat of terrorism to cruise ships.

**Consequences**

An ultimate consequence of an attack on a cruise ship would be reduced demand for cruise vacations. However, a multitude of preliminary and intermediate consequences also exist. Small explosives, hijacking, and food or water contamination would likely affect tens to hundreds of people. Assaults employing larger munitions could kill thousands. The most realistic attack assessments predict both human and economic consequences. In terms of moderate human and economic consequences, ramming a vessel packed with explosive represents the biggest risk. When focusing only on human consequences, the greatest risk comes from food and water contamination. A suicide bomber attack would probably result in the greatest immediate economic damage. 48

**Legal Implications**

Regulators can address potential actions to reduce the vulnerabilities, threats and consequences of a terrorist attack on a cruise ship. The greatest vulnerabilities, threats, and consequences of an attack on a cruise ship stem from scenarios in which an attacker gains access to a cruise ship and executes an attack using an explosive or contaminant, or a small vessel packed with explosives collides with the ship. Thus, to protect cruise ships from terrorism, regulation is needed to monitor people who purchase cruise tickets along with effective enforcement of the existing laws that establish security zones around cruise ships. Threats from small vessels might also be reduced by regulations enabling collection of further data about small vessel patterns.

**The Threat of Small Vessels**

Small vessels are defined as any watercraft, regardless of method of propulsion, less than 300 gross tons, used for recreational or commercial purposes. 49 Cruise ships operate in areas frequented by small vessels. Small vessels can easily blend in or disappear into other vessel traffic in ports and the coastal maritime environment. Small vessels are usually subject to less scrutiny than large vessels. As of 2007, many small vessels still moved freely within the federally mandated security zones of cruise ships that were passed into law after the September 11th terrorist attacks.

Small vessels have the potential to do great damage to other ships and passengers. Each possible method of small vessel misuse brings its own challenges for deterrence and prevention. In 2008, DHS’s Small Vessels Security Strategy (SVSS) was proposed. In early 2011, DHS issued a report to the public on the Implementation Plan for the SVSS.

One of the more apparent problems facing security policy to combat the small vessels threat is the amount of time required to identify the security threats posed by small vessels and implementation of effective policy against the threats. The SVSS was proposed in 2008, but the Implementation Plan was not released until 2011. If approximately nine million passengers embark in US ports each year, in the three years that elapsed during development of the Implementation Plan, approximately 27 million people took cruises that stopped in a US port. Based on that estimate, 27 million people faced the threat of small vessel waterborne attacks with very few measures in place that provide protection from those threats.

One of the biggest problems related to the threat of small vessels is that very little information is available on their use to structure effective security policy. This gap of intelligence on small vessels is a weakness subject to exploitation. As the Secretary of the DHS articulated at the Summit on National Small Vessel Security in 2007, “I will guarantee you one thing, the enemy is not wasting time ... This attack technique is one they have used before. It is one they will use again.” Arguably, the undetermined variable for small vessel waterborne attacks is not whether an attack will occur, but whether an attack will occur before or after an effective security policy is put into place.

**Threat and vulnerability: the passenger**

Generally, the threat of terrorism to the travel industry has resulted in additional security measures to protect travellers and transportation infrastructure. The 2010 US Presidential Memorandum states that screening technology, protocols, and procedures regarding transportation should be pursued, albeit in accordance with privacy rights and civil liberties. Recent federal legislation has placed increased background checking requirements for those working at ports. Also, passengers and crew on board cruise ships are looked at with increased scrutiny.

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52. The purpose of the SVSS’s was to identify the risks of small vessels as waterborne improvised explosive devices, a means of smuggling weapons, a means of smuggling humans, and platforms for conducting standoff attacks. The goals of the SVSS include developing and leveraging public and private sector partnerships in the small vessel community, enhancing maritime security and safety, developing technology to enhance small vessel security, and enhancing coordination, cooperation, and communication between security stakeholders. GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.27.
54. The time delay in implementing policy is predominantly explained by the limited information available in the US on recreational vessels. Currently, knowledge is incomplete on recreational boating, travel patterns, facility usage, and identifiers for legitimate threats. Without intelligence on small vessels, anticipating a small vessel attack is difficult. Also, most technology and legislation is not aimed at thwarting small vessel attacks. GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.5, 32-33.
Currently, Custom and Border Protection’s (CBP) regulations authorise the collection of Passenger Name Record (PNR) information in addition to manifest data for all international flights. The PNR data system for air transportation includes information such as full itineraries, reservation booking date, and billing information. The information is used to assist CBP officers in assessing the risk associated with an individual travelling to, from, or through the United States. Based on the CBP assessment, travellers may then be subjected to additional inspection or appropriate law enforcement action.56

The airline industry faces unique physical security issues that create unique privacy concerns, and ultimately, a different expectation of privacy on the part of the traveller. Airlines are freer than other entities to search an individual’s personal belongings, and in many cases airports serve as the site of border search.57 Likewise, cruise ships face similar physical security issues that create similar privacy concerns and expectations. Like airlines, cruise operators have considerable freedom to scan and search personal belongings and seaports also serve as the site of border search.

Perhaps CBP’s regulatory powers should be expanded to include monitoring cruise ships. Since cruise ships are a form of mass transportation providing access to the US, collecting additional cruise passenger data could enhance screening for potential terrorists.58 Extending the PNR to include cruise travel may help to reduce the vulnerability and threat of terrorism to cruise ships by ensuring that known attackers are not purchasing tickets.59

Given the balance of interests and the success associated with air transportation, implementation of a PNR data system for cruises would probably withstand a Constitutional challenge. In weighing the government’s interest in preserving national security against the individual’s privacy interest, in the current political climate national security concerns will probably outweigh the individual’s privacy concerns.60 Before implementing a PNR system for cruise ships, the documentation that will provide for the disclosure of the PNR data must be written, along with the appropriate agreements necessary for collecting and sharing data in accordance with the Privacy Act of 1974 and the E-Government Act of 2002. Privacy laws and concerns of other countries must also be addressed.61,62

56. Thus, all persons travelling to, from, and through the US are affected by the implementation of the PNR. The PNR’s purpose is to enable CBP to make accurate, comprehensive decisions about which passengers require additional inspection at the port of entry based on law enforcement information and other intelligence. While CBP is the primary user of the information, other government agencies outside the DHS umbrella and even outside the US can receive the information if it helps to accomplish the purpose of the PNR. If receiving PNR data, an agency must demonstrate the proper need to know the information and that it can ensure the information is properly protected. http://www.cbp.gov/xp/cgov/travel/clearing/pnr/, last visited September 26, 2011.
58. GAO, ‘Varied Actions Taken to Enhance Cruise Ship Security’, p.34-35.
59. The information derived from PNR has helped to successfully identify high-risk passengers who were not previously on watch lists by identifying links with other high-risk passengers and patterns of suspicious activity.
60. To date, some CBP field units have access to PNR information on a case-by-case basis for a particularised suspicion. Although discussions about the use of the PNR system as a screening tool for cruise ships continue, there are no data on the potential costs of implementing the programme. Additionally, there are no data on the impact the programme would have on sales. Determining whether implementation of a cruise ship PNR system would be sufficiently beneficial will also require further assessment of privacy impacts. Some DHS programmes are already in place for privacy concerns and provide travellers with the ability to redress resultant privacy injuries.
62. Under current privacy guidelines, PNR information can only be shared with countries with similar privacy laws to the US. In 2004, DHS and the Council of the European Union (EU) signed an agreement to exchange letters regarding the transfer of PNR data by carriers operating between the US and the EU http://www.dhs.gov/xnews/releases/press_release_0421.shtm, last visited May 9, 2011.
Conclusion

Travel is an activity in which most individuals engage or to which they are at least exposed. Terrorist attacks on travellers make a strong statement because the violent event triggers widespread fear. 2011 marked the tenth anniversary of the September 11th attacks on the Pentagon and World Trade Center. In the past ten years, the public has developed an increased expectation of security while travelling. To receive additional travel security, the public has surrendered certain privacy rights. While some reductions in privacy rights are readily apparent — for example, graphic body scans at security in airports — others, such as recording information about travel patterns, seem less intrusive to travellers. Yet, as this article describes, cruise ships, as a method of travel, still face many threats and vulnerability to terrorist attack. By enacting regulation that devotes resources to enforce the security zone around cruise ships and further data collection on small vessels cruise ships can become much safer. Also, enacting regulation for enhanced PNR disclosure, would limit many of the threats and vulnerabilities of terrorism by reducing the odds of a terrorist gaining access to a cruise ship area.

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YOUR ROUTE TO SUCCESS

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