

ON SOME SECURITY MEASURES TO PREVENT AND FIGHT AIRCRAFT TERRORISM

Robert MORAR, Cristian-Eduard ȘTEFAN

„Alexandru Ioan Cuza” Police Academy, Bucharest, Romania

***Abstract:** Terrorism is a threat to international security, peaceful relations among states, as well as to the proper development and functioning of democratic institutions. The fight against terrorism is a long-term process, and the challenges it generates are global. Therefore, the international community needs to address this issue globally. This study analyses some security measures taken by states to prevent and fight aircraft terrorism, with a particular focus on the European Passenger Name Record and the access of armed officers on board aircrafts.*

***Keywords:** aircraft, civilian aviation, terrorism, security measures, prevention and combating.*

1. PRELIMINARIES ON CIVILIAN AVIATION SECURITY

Civilian aviation security has been long regulated internationally; the following conventions have been adopted in this respect:

a) The Convention on International Civilian Aviation, open for signature in Chicago, on 7 December 1944¹. As mentioned in the Preamble to the Convention, one of the purposes of its conclusion is avoiding all misunderstandings among nations and among peoples, and the development of their cooperation, essential for world peace.

b) The Convention on Offences and Certain Other Acts Committed On Board Aircraft, concluded in Tokyo on 14 September 1963. This Convention applies to crimes and offences which may or may not be crimes, which may or do compromise aircraft or onboard security, or tamper with onboard order and discipline. This international act provides regulations on the jurisdiction on aircraft crimes and offences, the powers of the aircraft commander, hijacking, the duties and powers of the states.

c) The Convention for the Suppression of Unlawful Seizure of Aircraft, concluded in the Hague, on 16 December 1970². In its preamble, it is provided that unlawful seizure and control of an airborne aircraft compromise the security of people and goods, severely hindering aircraft services, undermining peoples' trust in the security of civilian aviation. The text of the Convention, comprising 14 articles, regulates the criminalization of airborne aircraft crimes, the specific jurisdiction for the crimes, extradition and legal assistance, etc.

d) The Convention on the Repression of Illicit Acts Directed Against Civilian Aviation Security, concluded in Montreal, on 23 September 1971³. The Convention regulates the sanctioning of intentional illicit acts directed against airborne aircrafts, or taxiing aircrafts on land, as well as on land installations and navigation services, which are detrimental to their security.

¹Romania adhered to this Convention in 1965, by adopting the State Council Decree No. 194/1965, published in the Official Gazette No.14/1965.

²Our country ratified the Convention by adopting the State Council Decree No. 143 of 19 April 1972, published in the Official Gazette No. 49/1972.

³Our country signed the text of the Convention on 10 July 1972, ratified it in 1975, together with adopting the State Council Decree No. 66 of 30 May 1975, published in the Official Gazette No.58/1975.

The text of art. 1 of the Convention stipulates that any person commits a crime if they illegally and deliberately inflict violence upon another person onboard an airborne aircraft, destroys or damages an aircraft on duty, place or aid by any means placing devices or substances on an on-duty aircraft, which may deteriorate or damage installations or aerial navigation services or hampers their functioning, communicate information known to be false, and as such jeopardize the security of an airborne aircraft.

The Convention lists the commitment of the states to severely sanction such crimes, to establish their jurisdiction, and set up immediate preliminary investigations to determine the facts, as well as take all measures to enable passengers and crew to continue their journey as soon as possible, returning the aircraft and its cargo to the rightful owners without delay. The Convention also contains regulations on the definition of an airborne aircraft, state jurisdiction in criminal investigations, provisions on extradition and other forms of legal assistance, etc. The Convention applies exclusively to civilian aircrafts, or aircrafts used for civilian purposes. Considering the provisions in their entirety, the Montreal Convention provides a suitable framework for effective international cooperation in the field of crime prevention within civilian aviation work.

The first international aviation security agreement was signed in March 1974, when the International Civilian Aviation Organization (ICAO) adopted Annex 17 of the Chicago Convention, named „International Aviation Security against Illicit Interference Acts”. Annex 17 lists standards, procedures and practical recommendations for the Convention signatory states, mainly focused on the safety of the passengers, crew, land personnel and the public during the enforcement of security against any civilian aviation illicit interference act. Annex 17 was repeatedly amended and reedited to the seventh edition in 2002. The last amendment, Amendment 10 was adopted on 7 December 2001, following propositions derived from the 11 September events, and came into effect on 1 July 2002. Here are some of the most

important amendments introduced by the tenth amendment: the provisions in Annex 17 were extended to cover internal flights, and a new standard was issued to regulate security control of all luggage on all airports starting with 2007 (www.guv.org).

2. SECURITY MEASURES TO PREVENT AND FIGHT AIRCRAFT TERRORISM

2.1. The need for safety measures on board aircrafts. The first worldwide hijacking considered a terrorist act was on 23 July 1968, when three members of the Popular Front for the Liberation of Palestine captured an aircraft of Israeli company El Al, in flight from Roma to Tel Aviv, with the aim of exchanging hostage passengers with Palestinian terrorists held in Israeli prisons.

More recently, on 11 September 2001, local time 8:45 (15:45 – Romanian time), a B-767 American Airlines passenger plane, hijacked by terrorists, hit one of the 110-stories twin towers of World Trade Center (WTC) in New York. At 09:03 (16:03, Romanian time) a second hijacked plane, a United Airlines B-737 hit the other tower. The first tower collapsed at 09:59, and the other at 10:29. Approximately three hours after the attack on the first WTC tower, a United Airlines Boeing crashed in Shanksville, Pennsylvania, after the passengers tried to overpower the terrorists. Another hijacked plane hit the Pentagon building, the headquarters of the Department of Defense, killing 190 people. In total, 3668 people lost their lives on 11 September 2001 (www.scienceonline.ro).

After the nine eleven events, the states tried to find together the most effective methods to prevent and fight terrorism on board aircrafts. To this end, they implemented a series of security measures, such as: complex foreign visitors tracking and identification, body searches executed by security controllers, employing photographic and fingerprinting devices for foreign visitors, employing security officers on board aircrafts, as well as the European Passenger Number Record.

2.2. The European Passenger Number Record. One of the prevention instruments

applicable in the field of aircraft terrorism is the Passenger Number Record (PNR), which ensures high data protection, to prevent, identify and investigate terrorist attacks and serious related crimes, based on impact analysis. In this respect, we could better comprehend the various types of threat and their likelihood, we could anticipate what could happen, ready to face not only the consequences of a threat becoming reality, but also to initiate prevention and identification mechanisms before the commission of such acts.

On 16 January 2003, the European Community Commission published a communication to the Council and Parliament on data transfer from the PNR, entitled „A global approach to the EU”, focused on determining the elements of a global approach to the EU regarding PNR. The communication was an appeal to instituting a legally safe framework for PNR transfers to the US Department of Security, and adopting internal policies on PNR.

PNR data are unchecked information provided by passengers and compiled by airline companies to enable reservations and bookings. They represent a file of the passengers' travel requests, kept by the reservation and booking systems belonging to airline companies. They contain various types of information, for instance travel data and travel route, information on the ticket, contact information, such as the address and telephone number, the tourism agency, information on the payment, seat number, and luggage information. PNR data are different from the information about passengers (Advance Passenger Information - API)⁴; the latter consist of biographic information taken from the passport optical scan, including a person's name, address, place of birth and nationality.

⁴According to the API Directive, API data are made available to border control authorities only for the flights entering the EU, in order to improve border control and combating illegal migration. Even if the directive allows their use in other law enforcement circumstances, this is considered mostly an exception rather than a rule. API data are kept by the member states for 24 hours.

Internationally, PNRs are increasingly seen as a necessary instrument to fight terrorism and serious crimes. Three parameters led to the onset of this trend. First, terrorism and international crimes are a serious threat to society; therefore, measures are necessary to eradicate this problem. Access to and processing PNR data is a necessary measure for law enforcement. Secondly, recent technological advances have made such data access and processing possible, which was inconceivable a few years ago. The latest technological advances are also largely used by criminals to plan, prepare and commit crimes. Finally, the rapid increase in international traffic and the number of passengers employed electronic data processing before the arrival of the passengers, to ease and accelerate border control and security checks, as the risk is assessed prior to arrival. This enables law enforcement officers to focus only on passengers suspected on reasonable grounds to represent a direct threat to security, rather than assess individuals based on instinct, preconceived stereotypes or profiles.

On 11-12 April 2011, the Justice and Internal Affairs Council (JAI) in Luxemburg, examined a European Commission bill on using PNR data for the prevention of terrorism and serious crimes. One of the main aspects discussed debated on the issue of limiting the collection of the so-called PNR data for the flights to and from third countries, and covering the flights within the EU. Most member states were in favor of including at least one option to allow each member state to decide upon collecting such information for some flights within the EU. The aim of the bill is to institute a coherent EU system of flight passengers data, through the implementation of a single EU model for all member states adhering to the new regulations, as well as fostering cooperation among relevant authorities within the EU. As such, all airline transporters operating and identified by the new regulations should send PNR data to law enforcement authorities in the member states. However, these authorities will only be allowed to use the data collected by the airline transporters to prevent, identify and investigate terrorism and serious (cross-border) crimes.

2.3. The access of security officers onboard aircrafts. According to ICAO standards in Annex 17 to the Chicago Convention, as well as the EU legislation in the field of civil aviation security, the access of armed officers on board aircrafts is defined as an additional measure of airline security.

The requests made after 11 September 2001 are notable in the area of deploying armed agents onboard aircrafts, departing from the EU. The implementation of such initiative has been long debated internationally, raising serious concerns about the compliance with certain individual rights and liberties.

On 27 May 2005, the Prüm Treaty was signed by Germany, Austria, Belgium, the Netherlands, France, Luxembourg and Spain, on issues regarding fostering cross-border cooperation, especially in the field of fighting terrorism, cross-border crime and illegal migration. The treaty aims at fostering cooperation between signing countries in their fight against terrorism, cross-border crime and illegal migration, using the data exchange on genetic information (DNA), fingerprints, vehicle registration and other personal information.

A distinct regulatory area within the Treaty is the access of security officers on board aircrafts. According to the Prüm Treaty, armed officers on board aircrafts are specially trained police officers or public authority officers, assigned to maintain security on board aircrafts.

Each Contractual Party to the Treaty decides autonomously according to its own national policy of airline security on the intervention of armed officers on board aircrafts registered by the respective Contractual Party. The intervention of armed officers on board such aircrafts is performed according to the Chicago Convention of 7 December 1944 on International Civilian Aviation and its annexes, especially Annex 17, and other documents regulating its enforcement, also considering the jurisdiction of the aircraft commander, according to the Tokyo Convention, of 14 September 1963 on crimes and offences on board aircrafts, and in line with other relevant International Law

regulations, if they are mandatory for the respective Contractual Parties.

The Contractual Parties of the Prüm Treaty also support one another in providing initial and continuous training for armed officers on board aircrafts, in close cooperation in issues related to the equipment of such officers.

Before joining a flight, the national coordination point of the sending Contractual Party of the Prüm Treaty, indicated by article 19, must inform in writing on this intervention. The written memo is sent to the national coordination point of the other Contractual Party at least three days before the respective flight with the destination or in the direction of an airport of another Contractual Party. If imminent danger is suspected, the written memo is sent without delay, basically before landing.

The written memo, confidentially processed by the Contractual Parties covers the data mentioned in Annex 1 of the Treaty. The Contractual Parties may modify Annex 1, in a distinct agreement. The necessary information, according to article 17, line (5), for the written memo is as follows: response times, describing the convened duration of stay; the flight data (including numbers and timetables); the number of the armed officers on board the aircraft, their names with an indication of the name of their task force commander, passport series, type and series of weapons, quantity and type of ammunition, and the equipment brought in to assist officers in the performance of their duty.

The limitations imposed to the armed security officers when on the territory of another Contractual Party are as follows:

- they shall not leave the aircraft, access airports or their security restricted areas, unless escorted by a representative of the respective authorities;
- weapons and ammunition shall be stored for supervised safekeeping in the areas assigned by the national authority of the other Contractual Party.

Romania signed the Prüm Treaty by adopting the Act No. 146/2008. In line with the provisions of article 2, letter C. b) of Act No. 146/2008, the Romanian Intelligence Service was assigned as authority for contact

and coordination points for aircraft armed security officers, as defined by article 17 in the Prüm Treaty.

At the same time, the enforcement of the Memorandum of Understanding on the work of security officers on board aircrafts, between the Romanian and American governments, assigned the Romanian Intelligence Service as national authority in aircraft security and the information exchange to support this activity. In turn, the Antiterrorist Brigade of the Romanian Intelligence Service created a special task force, made of highly trained personnel, and specially equipped to perform specific missions.

3. CONCLUSIONS

Recent events, such as the terrorist attempt onboard a plane on Christmas Day 2009 and the Times Square event in New York 2010 show that the terrorist threat still exists.

To conclude, we strongly believe that a successful enforcement of the new provisions on preventing terrorism onboard aircrafts in Europe can only be obtained when all EU states have taken in these provisions, as cross-border cooperation of the states is of paramount importance in maintaining security onboard aircrafts and preventing terrorism attacks.

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