The European Union approach to terrorism: the case of civil aviation security

(Draft Paper: not to be quoted without author's permission)

Civil aviation has been a target of terrorism since the development of the aviation sector itself, but the attacks of September 11, 2001 (9/11) were paradigmatic and their magnitude placed civil aviation security to the top of the political agenda. The European normative framework existing at the time of these attacks reveal that aviation security issues were left to the responsibility of each individual Member State. Realising the importance of coordinated and common policies for aviation security given the transnational nature of terrorism, the EU started to expand its regulatory framework on aviation security.

This paper aims to analyse the progress attained in the EU regulatory framework and the challenges of this Europeanisation of security for both the EU and its Member States, bearing in mind the institutions involved, the security narratives, and the technological developments (i.e. biometrics and databases).

Keywords: terrorism; civil aviation; Europeanisation; institutions; narratives; technology.

Introduction

The literature about European security has not paid as much attention to aviation security as to other subjects like immigration, for instance. This is surprising because the aviation sector has high economic and strategic relevance and it is part of the systems of critical infrastructures that the EU seeks to protect.

The first part of this paper aims to show the evolution of terrorist attacks against aviation; the second demonstrates the security narrative that legitimates action against terrorism; the third shows the progress achieved in the European Union regulatory and
in institutional frameworks. Finally, the fourth part examines the technological developments for dealing with the terrorist threat.

1. The evolution of terrorist attacks against aviation

The relationship between terrorism and civil aviation is as old as the development of civil aviation itself and terrorist attacks against this sector can be easily identified in South America where the first terrorist actions occurred in the 1930s (Naudin 2007:40).

The typology of terrorist acts varied throughout the twentieth and twenty-first centuries, oscillating between: i) the detour of aircraft holding hostages by organised groups that demanded either the release of fellow fighters, political concessions or the payment of ransoms in the exchange for hostages; ii) the placement of bombs on the plane as hold baggage to destroy it; iii) shooting missiles from land against planes in-flight; iv) attacks against airports; and v) destroying the aircraft by crashing it against a target. In either case the media coverage played an important role in broadcasting the events to the common citizen amplifying the terrorists’ claims and generating a sense of fear of flying. European passengers, airlines and airports have been targeted by terrorist actions throughout history.

In a globalised world, thousands of aircrafts cross several international borders daily which opens the possibility of transforming the aircraft not only into a target but also into a means of attack. Actually, the airplane was transformed into a weapon of powerful destruction when 19 terrorists hijacked 4 commercial airplanes in the U.S. killing approximately 3,000 people (Timeline 9/11). The tragic ending of 9/11 – with the collapse of towers 1, 2 and 7 of the World Trade Centre, structural damages to the Pentagon and an unprecedentedly high number of victims (9/11 Commission, 2004:339) – made it a paradigmatic case and contributed to the development of studies, policies and measures to deal with terrorism against aviation not only in the US but worldwide also.

2. The security narrative post-9/11

The security narrative after the 9/11 attacks was based on the assumption that the terrorist organisation responsible for those (Al-Qaeda) sought to target western
countries (both the US and Europe) and could resort to all kinds of means to succeed. Al-Qaeda, as a networked organisation with cells of terrorists spread around the world, became a transnational security threat and this represents one characteristic of the contemporary security threats along with heterogeneity and unpredictability. Hence, such threat perception led the EU to express its feelings of solidarity with the victims through the voice of important personalities such as Javier Solana (then High Representative for the Common Foreign and Security Policy) and Romano Prodi (then President of the European Commission). According to the narrative, the way to deal with terrorism should be a plural and integrated approach based on cooperation. This idea is evident in the European Security Strategy (2003), when is stated that:

“The new threats are dynamic.” (...)In contrast to the massive visible threat in the Cold War, none of the new threats is purely military; nor can any be tackled by purely military means. Each requires a mixture of instruments.” (p.7).

In addition, the EU face security problems derived from the mobility of people and goods in the European area due to the Schengen Agreement because the right of movement within EU borders is accessible to all and therefore accessible to citizens perpetrating illicit activities. Surveillance and detention thus becomes more difficult in a broad geographical area as the EU which require specialised institutions and legislation to ensure a secure area.

The EU normative framework at the time of 9/11 revealed that aviation security was something left to each individual Member State’s responsibility and was not part of the Union’s sphere of legislative competences. Given the cross-border nature of terrorism and the magnitude of the attacks, the EU realised the importance of coordinated and common policies for aviation security as well as the expansion of the regulatory framework by improving already existing counterterrorism measures, as well as by introducing new ones and reinforcing the institutions that work in terrorism. As an example, on 20 September 2001, the European Council held an extraordinary meeting (Council of the European Union, 2001a, 2001b) that established a Plan of Action recognising the need for better cooperation among its Member States through a multilateral framework. The Plan typified acts of terrorism and the respective
punishments (Council of the European Union, 2001c)\(^1\) and it included five main objectives to combat terrorism, the fourth\(^2\) of which tasked the Transport Council\(^3\) to cover measures to strengthen air transport security (Council of the European Union-Policies, 2013).

### 3. New steps on the European Union regulatory and institutional frameworks

The aviation sector is a multi-layered and complex system that faces numerous challenges whose solutions shall be foreseen at the earliest stage possible in order to reduce the vulnerabilities. Security is a vital issue in the case of civil aviation given the fact that any aircraft incident reflects negatively on the reputation of the industry and fatalities generate a reluctance on the part of the population to use air transportation. Also, aviation actors are very interdependent: what a stakeholder does or, more importantly, does not do, directly affects all other stakeholders and the sector as a whole. Hence, cooperation between countries and among other partners, like airline companies and airports, is crucial to ensure the implementation of general norms and good practices by the largest number of actors possible. However, regulatory harmonisation and compliance is a challenge.

In a brief and systematised way we can say that at the European level the key stakeholders in aviation security (both public and private) are the following:

- **i)** The *European Civil Aviation Conference* (ECAC) – it was created in 1955 to promote the coordination and better use of air transport within the European area, it has 44 Member States, with all the 28 EU Member States (ECAC — History, 2013). It works towards the harmonisation of civil aviation policies and practices amongst its Member States, and the promotion of understandings on policy matters between its Member States and other regions of the world.
- **ii)** The Directorate-General Home Affairs, European Commission – guides its actions by the EU Counter-Terrorism Strategy.

---

\(^1\) The EU Action plan has been updated and revised since it emerged in September 2001.

\(^2\) The other objectives included the enhancement of police and judicial cooperation, development of legal international instruments, the end to the funding of terrorism, and the coordination of the EU’s global action.

\(^3\) The Transport, Telecommunication and Energy Council/TTE, within the European Council which meets approximately every two months.
iii) The Directorate-General for Mobility and Transport (DGMOVE), European Commission – it has developed the Critical Infrastructure Warning Information Network/CIWIN, since 2008 to identify and evaluate the need to improve the protection of European critical infrastructures.

iv) The Committee on Transport and Tourism (TRAN), European Parliament – develops legislation in the field of transports, tourism and postal services.

v) The Association of European Airlines (AEA) – it was formally created in 1954 and currently has 31 European airline companies. It promotes dialogue on diverse subjects on aviation among a wide network of European institutions, air industry partners, public employees, media among others (AEA — Air Transport in Europe, 2013). This Association combines expert knowledge, lobby and communication directed to the Commission, the Parliament and the Council in order to reach beneficial actions to its Airlines (AEA — Role, 2013).

vi) The Airports Council International (ACI) – is divided into five geographical regions including the European region. It was formed in 1991 and comprises 573 members that operate in 174 countries and territories (ACI — Brief History; ACI — Structure).

vii) The European Aviation Safety Agency (EASA) – is a Community Agency and has its own legal personality. It started its work in 2004 and was given specific regulatory and executive tasks in the field of civil aviation safety and environmental protection. Its mission is to promote the highest common standards of safety and environmental protection in civil aviation (EASA — Generic, 2014).

viii) The European Aviation Security Training Institute (EASTI) – it was inaugurated in November 1997 as a European Training Centre of the International Civil Aviation Organisation and became a common project of this Organisations and the European Commission and the Member States with courses open to government representatives and participants from the air industry (EASTI — About, 2013).

ix) The European Agency for the Management of Operational Cooperation at the External Borders of the Member States of the European Union (Frontex) – set up in 2004, this Agency has the objective to facilitate the implementation of
the EU measures in the matters of management of external borders and provide technical assistance and expert knowledge to ensure solidarity and coordination of the member States in implementing those measures.

x) The Task Force for the Fight against Terrorism within the European Police Cooperation Agency (Europol) – It became a Community Agency on 1 January 2010.

xi) The network of airport related law enforcement agencies (Airpol) – this is a multidisciplinary network of operational cooperation to Exchange information and good practices by representatives of police, customs and other services with experience in air security within the Schengen area and the Member States.

Aviation security witnessed an important boost with the publication of a set of Regulations, namely:


² Restrictions on carrying liquids, aerosols and gels (commonly referred to as LAGs) in hand luggage were introduced in 2006 following the terrorist attempts at London-Heathrow concerning seven aircraft bound to the US. All LAGs in hand baggage shall be screened, with the exception of the following exemptions: (i) their volume is less than 100 ml and they fit into a 1 litre plastic bag; or (ii) they are to be used during the trip for medical or dietary requirements; or (iii) they have been obtained within the preceding 24 hours at


vii) The Commission Implementing Regulation (EU) No 711/2012 of 3 August 2012 amending Regulation (EU) No 185/2010 laying down detailed measures for the implementation of the common basic standards on aviation security as regards the methods used for screening persons other than passengers and items carried.


certain secured areas of an EU airport or on-board an aircraft of an EU carrier and they are packed in a "security tamper-evident bag" (STEB) as recommended by ICAO. The Commission Regulation (EU) No 720/2011 of 22 July 2011 amending Regulation (EC) No 272/2009 supplementing the common basic standards on civil aviation security as regards the phasing-in of the screening of liquids, aerosols and gels at EU airports.

There is an EU convergence of the agenda and legislation that EU Member States must follow and implement. Moreover, the European States have lost a significant degree of sovereignty in the regulation and management of the civil aviation sector to European institutions which are responsible for decision-making. It could therefore be asserted that aviation security has fallen into the *Europeanisation* process which, according to Cowles, Caporaso and Risse means:

“the emergence and development at the European level of distinct structures of governance, that is, of political, legal, and social institutions associated with political problem solving that formalize interactions among actors and of policy networks specializing in the creation of authoritative European rules” (2001:3).

4. **The technological developments for dealing with the terrorist threats**

The EU issued in 2005 the *Counter-Terrorism Strategy* which outlined a strategic commitment to fight terrorism with internal and external responses around four pillars: *prevent, protect, pursue* and *respond* (Council of the EU, Presidency & CTC, 2005). The second pillar – *protect* – concerns the protection of citizens and infrastructure, namely the improvement of air transport security through a combination of initiatives based on IT technologies that collect, process and share information to improve security on external borders.

Among such innovations were the introduction of biometrics in EU passports which include facial images and fingerprints⁶ to improve document security and combat fraud and falsification. Also, the Visa Information System/VIS was introduced that allows Schengen States to exchange visa data and decisions relating to applications for short-stay visas to visit, or to transit through, the Schengen Area (DG Home Affairs - VIS). A third tool was the second generation Schengen Information System/SIS II that contains alerts on persons wanted for arrest for surrender purposes and wanted for arrest for extradition purposes as well as alerts on missing persons and wanted persons (Council Decision 2007/533/JHA of 12 June 2007). Furthermore, equipment improvements such as metal and explosive detectors, or the whole body imaging (WBI) scanning – which

generate their images from x-rays. The effectiveness of this last type of scanning has however been questioned for various reasons (Riley 2011:148-9):

a. Health concerns due to the fear for human exposure to X-ray radiation;
b. The waiting time for passengers doing the scan;
c. The feeling of personal insecurity because passengers in the WBI cannot watch their luggage.
d. The potential abuse of fundamental rights and one of the issues consists of knowing exactly what happens with the images of passengers’ bodies after the control check by security employees and knowing whether the images are deleted or stored and what occurs if they are stored. The EU has reinforced the notion that the adoption of measures restricting these rights “must be justified for reasons of general public interest (in this instance aviation security) and must respect the principles of necessity, legality and proportionality” (Europa website).

**Final remarks**

The aviation sector has been a sector of opportunity for terrorists in their campaigns of violence and there is no evidence of this being otherwise in the near future. Terrorism constitutes a threat against which every State has to be prepared and it is crucial to develop critical knowledge on the subject of terrorism in civil aviation, as well as to make available state-of-the-art research on its issues. These would lead to more effective prevention and, in situations where terrorist actions were not successfully prevented, to the detention and prosecution of the terrorist(s) who perpetrated the attack.

Research on aviation security is prolific and some paths will possibly have some developments in the near future and this paper highlights the institutional relationship between the political and technical levels of decision-making as well as the balance between the technological improvements used for security and fundamental rights protection, in a way that both security and rights are kept guaranteed.
Bibliography


Legal resources


Electronic sources


