

THE PREVENTION AND COMBATING OF TERRORISM ACTS COMMITTED ON BOARD AIRCRAFT

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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: terrorism; aircraft; security; prevention; combat.

The need for security 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 2001¹.

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

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¹ <http://mistereleistoriei.scienceline.ro/>

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.

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)²; the latter consist of biographic information taken from the passport optical scan, including a person's name, address, place of birth and nationality.

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;

² According 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 members states for 24 hours.

therefore, measures are necessary to eradicate this problem. Access to and processing PNR data is a necessary measure for law enforcement. Secondly, recent technological advents have made such data access and processing possible, which was inconceivable a few years ago. The latest technological advents 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.

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.

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, it is essential that a successful enforcement of the new provisions on preventing terrorism onboard aircrafts in Europe should 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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