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### **Measures for the combat of aviation terrorism**

**Abstract:** The author dealt with the subject of aviation terrorism and mechanisms aimed at combating it. The subject of discussion is the concept of aviation terrorism and its range. Then the author will discuss the international conventions that govern this issue, e.g. the Convention on Offences and Certain Other Acts Committed on Board Aircraft, the Convention for the Suppression of Unlawful Seizure of Aircraft of 1970 or the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation of 1971. The author will also present examples from the judicature concerning aviation terrorism. Subsequently, a ruling by the Polish and German Constitutional Tribunal which rejected the shooting of an aircraft violating the airspace of a given country will be analysed. A particular attention will be paid to the mechanisms aiming at securing the airlines and the airports by the state. The paper ends with deliberations on the air traffic safety.

**Keywords:** Airport Terrorism; Security; Terrorist Attack

#### **Introduction**

Along with the growth of passenger traffic, new challenges are being posed before civil aviation, whose task is to provide the greatest protection to those who use air transport. A breakthrough moment that made the international community aware that unlawful attacks can be made with a civilian ship was a 2001 terrorist attack on the World Trade Center, when two aircraft hit skyscrapers, killing both people on board, in buildings, and on land [19]. This sudden and unexpected event resulted in the necessity to regulate issues related to combating terrorism and security, among others at airports or on board an aircraft [29].

#### **The concept of air terrorism and its limits**

Although the phenomenon of terrorism has developed over the centuries, international law has so far failed to concretize this concept, let alone its variation of air terrorism [20]. Nevertheless, the literature has developed several definitions defining this act [32]. According to A. Glen, aviation terrorism is a constituent of terrorism, the actions of which are directed at organizations, apparatus, and persons who run and use aviation [9]. In turn, Z. Garlicki described this phenomenon as acts of international terrorism that pose a threat to the safety of air transport [8]. Thus, it can be concluded that the threat of this type of unlawful activity is directed to broadly understood aviation, from the port and airlines to organizations such as, for example, air navigation agencies. However, it should be noted that each of the above-mentioned objects of terrorism has separate security systems or legal regulations aimed at combating terrorism at the root.

In the case of airports, the most vulnerable area of attack is the public zone of the aerodrome to which every person without passenger status has access. Although there is monitoring in this area, the response speed of the services to any threat can be emptied. This was the case of terrorist attacks in 2016 at the Zavent Airport in Brussels [22] or Atatürk in Istanbul. As a result of the organized action of terrorists, many people died. It should be emphasized that in both situations, the assassins freely entered the passenger terminal area with explosives, which they then detonated. Recent events have not been isolated acts of terror, because in the history of aviation have already been reported attacks on the place of

public utilities which is the airport (such as the airport in Athens in 1968, or in Zurich in 1969). In addition to the above, the aircraft is exposed to external interference, together with passengers and crew. The abduction of civilian aircraft, i.e. air hijacking, began in 1931 when the aircraft machine was invaded by Peruvian revolutionaries. The next unlawful behaviors on board the ship were from the aircraft abduction: PLL LOT in 1969, Ethiopian Airlines in 1996, or in 2014, on the Afriqiyah Airways line and the EgyptAir line in 2016 [7].

### **International anti-terrorist law**

Safety is a priority issue for both carriers, organizations and airport operators. Through continuous training of flight crews, an introduction of new legal or technical regulations and implementation of recommendations suggested in reports by state committees investigating aviation accidents, the aviation industry aims at securing the life and property of passengers using air transport. The first international conventions that referred to security were:

- Chicago Convention and Annex 17 [2],
- Convention on crimes and certain other acts committed on board an aircraft [3],
- Convention for the Suppression of Unlawful Seizure of Aircraft [4],
- Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation [5],
- Protocol on combating unlawful acts of violence at airports serving international supplementary aviation The 1971 Montreal Convention [1],
- The Beijing Convention of 2010, replacing the Montreal Convention of 23 September 1971 [16],
- Supplementary report to the Convention on combating unlawful seizure of aircraft, done at Beijing on September 10, 2010 [17].

The Chicago Convention has regulated important civil aviation issues. First of all, under this document, it was established that each country has total and exclusive sovereignty over the airspace over its territory (Article 1). Thus, it may establish special zones over which, due to military or public security reasons, planes of other countries cannot fly (Article 9). In addition, the international community decided to create art. 3 bis, which requires that states refrain from using weapons against civilian ships and in the situation when interception of an aircraft violating the airspace occurs, strive to ensure the safety of both passengers and the machine. The necessity to add this article was created due to the cases of shooting down civil aircraft, e.g. El Al Lot 402 in 1955, Libyan Airlines flight 114 in 1973, Korean Air Lines flight 007 in 1983. It should be noted that despite the indicated regulation, sometimes such events occur, for example, as in 2014, when the plane of the Air Malaysia line was hit by a missile. Furthermore, at this stage, it is right to point out that after the attacks on the World Trade Center in 2001, many countries have created provisions allowing the shooting of a foreign aircraft that has violated their airspace. Such countries were, inter alia, Poland (Article 122a of the Aviation Act [6]) and Germany [30]. These regulations did not function long in the legislation of these countries, because they were considered by the Constitutional Tribunals of both countries as incompatible, disproportionate and harmful to human life [33]. In addition to the above-mentioned provisions of the Chicago Convention, important regulations regarding civil aviation safety are included in Annex 17 to this document [18]. The aim of the states is to prevent explosives from being carried on board an aircraft, a weapon that could endanger passengers' lives. In addition, the signatories of the convention are to ensure security in the airport's operational areas by controlling access to these places. This process involves verification of identity or permissions. In addition to the above, areas that require special attention from the state are:

- aircraft,
- passengers and their cabin baggage,

- registered luggage,
- cargo, mail and other goods,
- special categories of passengers,
- usable areas of the airport,
- cyber threats.

In the case of aircraft, States must check or search the ship. In addition, the task of air carriers is to remove all items left by passengers on board. In turn, every traveler must undergo security checks at the airport before the flight. This verification consists in checking the identity of an important document such as a passport or personal ID card. In addition, each person is controlled by metal detectors, and hand luggage is screened with an X-ray machine. Another element for which protection measures are applied is checked baggage placed under the aircraft deck. It is reasonable at this stage to indicate that the air carrier cannot carry luggage without its owner. Such an obligation arose after the plane crash over Lockerbie in 1988 when safety rules were violated by line workers who agreed to transport luggage without a passenger on board. The result of their decision was the explosion of a bomb, the total destruction of the aircraft and the death of all those flying on this flight and people on the ground. Thus, if the passenger has a connecting flight and fails to arrive at the time of check-in, and his baggage has already been placed on board the aircraft, it is necessary to unpack it.

Loads, mail and other goods should pass a security check that will verify whether they can be transported. In this case, both air carriers, airport managers, agents, and shippers should respect transport rules and protect against unauthorized interference from outside. Unfortunately, aviation crashes occurred in the history of aviation, caused by the cargo carried on board. Examples are the Valuejet 592 aircraft flight in 1996, or National Airlines 102 in 2013. In the first case, transported oxygen cylinders that were not secured activated and caused a fire, which spread to the entire air machine [10]. In turn, in 2013, when carrying armored cars, the bindings that held these charges were torn apart, resulting in their displacement and damage to the machine that lost controllability. As was determined by the commission examining this incident, the insufficient number of ligaments was used to fasten the product and its weight was exceeded [11]. Therefore, from the point of view of security, it is important to inform air carriers about transported products and to comply with established standards for the carriage of certain things, which may prevent many air accidents.

Another issue addressed in Annex 17 to the Chicago Convention is the application of protection measures for a special category of passengers, including persons covered by the court or administrative proceedings. When transporting such onerous passengers it is necessary to have security officers present and to inform the carrier and the ship's commander about the number and seating position of the abovementioned persons. In other areas such as airport use areas and cyber threats, Annex 17 to the Chicago Convention indicates the need for regulatory measures to protect both the operational area of the airport and information and communication technologies.

Another document relating to civil aviation security is the Tokyo Convention signed in 1963, under which the commander, crew, and passengers (in special cases) were granted the power to take measures to ensure the safety of the aircraft. Thus, designated persons may apply coercive measures to a person who has committed unlawful conduct during a flight threatening the lives of persons or property on board (art. 11). In addition to the above, it should be mentioned that the Convention applies to offenses regulated by criminal law, as well as acts that may endanger or violate order and discipline on board. An example of a situation in which the crew and passengers of a ship responded in accordance with the provisions of the convention is to overpower a person who during the flight tries to open the aircraft door.

The next international act that was regulated was the Hague Convention of 1970. This document has developed the provisions contained in the Tokyo Convention, inter alia by accurately identifying the offense that is committed during the flight by plane. According to art. 1, a crime is taking over an aircraft or taking control over it or attempting to do it. The above behavior must be unlawful, carried out by violence or the threat of violence or other forms of intimidation. In addition, cooperation with a person who commits or attempts to commit such an act is penalized. The Convention also specifies issues regarding the prosecution, sentencing, and conviction of the perpetrator.

The international act that separated the detailed catalog of crimes committed during the flight by plane is the Montreal Convention of 1971. According to art. 1 acts that are punishable are, for example, an act of violence against a person on board, destruction of a ship, placement of equipment or substances that may damage the aircraft. It should be borne in mind that in addition to the above unlawful behavior, there are other acts that were introduced by the Protocol to Combat Unlawful Acts of Violence at Airports Serving International Aviation Complementary to the 1971 Montreal Convention. These are:

- an act of violence (against a person at the airport) that can cause serious injury or death.
- destruction or serious damage to the property of an airport or non-service aircraft at the airport,
- disturbing the functioning of the airport.

The latest international acts on civil aviation security are the Convention and Protocol signed in Beijing in 2010. It should be noted that this technology and IT development had an impact on the establishment of these regulations because the indicated documents were adapted to the current threats to air transport. At present, terrorist attacks aimed at complex navigation systems onboard aircraft or at airports. In this way, crime can be done at any place, using technical means that allow you to exercise control over the aircraft. Such activities penalize the Protocol, which extends the definition of the crime to acts not only carried out on board an aircraft but also outside it.

The Beijing Convention, on the other hand, introduces criminal liability not only for perpetration but also for leadership or complicity. In addition, aiding and entering into an agreement is punishable [31]. Currently, both documents are still awaiting ratification by twenty-two states. Given the international regulations outlined above, it should be mentioned that States also conclude bilateral international agreements with each other, in order to regulate in detail the issues regarding ensuring the safety of civil aviation.

### **EU law on security**

In addition to international regulations, there are legal acts that have been regulated at European level. Above all, these are:

- Regulation (EC) No. 2320/2002 of the European Parliament and of the Council [23],
- Regulation (EU) No 300/2008 of the European Parliament and of the Council [27],
- Commission Regulation (EC) No. 272/2009 [25],
- Commission Regulation (EC) No 185/2010 [24].

The emergence of the first of these documents was a response to the terrorist attacks made in 2001, which caused indignation in the international community. As a result of these events, it was decided to create a convention that would impose the introduction of national programs for the protection of civil aviation security. In addition to the above, countries must establish common standards and mechanisms for security measures. In addition, it is necessary to set up a body responsible for the coordination and control of the implementation of civil aviation security programs. Also, the parties to the Convention may establish stricter measures to ensure security than those indicated in the aforementioned document (Article 6). Regulation

no. 300/2008, compared to the previous one, has an extensive statutory glossary (Article 3), thanks to which the wording used is expressed clearly and there is no doubt about it. Both the first (Article 1) and the second (Article 1) the Regulation uses similar measures to achieve civil aviation safety. As in Regulation No. 2320/2002, each state appoints an authority that is required to coordinate and monitor the implementation of measures to ensure aviation security (Article 9).

In turn, Commission Regulations (EC) No. 272/2009 and No. 185/2010 order the introduction of methods for the detection of liquid explosives and suggests adding the necessary new items of objects, the carriage of which is prohibited. Both the first and the second document set out specific measures to implement common basic standards for civil aviation security against attacks of unlawful interference.

### **National regulations**

In addition to legal acts of international importance, there are also national regulations relating to civil aviation security issues, such as the Aviation Act (Articles 186-189a) or the Regulation of the Minister of Transport, Construction and Maritime Economy of July 31, 2012 regarding The National Civil Aviation Security Program, which specifies in detail what actions should be taken at the airport or in relation to the passenger, checked baggage, hand luggage, cargo, so that civil aviation is safe [26]. According to art. 2 of the Aviation Act, an act of unlawful interference in civil aviation is an unlawful and deliberate act consisting, for example, in the use of aircraft during flight, violence against persons on board, destruction of aircraft or damage, placement on board of an object that may endanger the safety of others. Thus, it should be noted that the definition is similar to that contained in Annex 17 to the Chicago Convention. In addition, the Polish law regulates the issue of placing onboard an aircraft a guard duty performed by officers of the Border Guard. Such an obligation must be met by the air carrier when the President of the Civil Aviation Office considers that the flight being performed is a high-risk flight (art.186a). Nevertheless, the semantic scope of the notion of a high-risk flight is questionable due to the lack of a legal definition of the term, which would indicate characteristics that could distinguish it from a standard flight. Nevertheless, it should be assumed that the President of the Civil Aviation Office may qualify as a high-risk flight any flight that may be at risk of the occurrence of an act of unlawful interference. This definition was also included in the Council of Ministers' Regulation of July 15, 2003, which was no longer in force [28].

### **Security measures at airports**

Both states and airlines use methods that are aimed at reducing the risk of unlawful interference (outsiders) at an airport which is a public place. It is where the journey of many passengers begins or ends. First of all, the person who purchased the ticket for a given flight goes from the airport parking to the passenger terminal, which is available to the public. In this zone, both the passenger and other persons may stay awaiting check-in. It is important to keep luggage unattended, as this can be considered an attempt to place an explosive charge. The next step is check-in when the employees of the airline check the compliance of the data on the ticket with the ID document. At check-in, we give checked-in luggage and take hand luggage with you. The next step is to go through the security check of both the passenger and the hand luggage. Airport employees primarily carry out a manual check of persons passing through magnetic gates. On the other hand, hand luggage is subject to manual verification and using an X-ray device. If prohibited items are detected by the security control operator, they are removed. Currently, each airline on the website publishes general terms of carriage of hand and registered luggage, which lists what can be carried on board and what is not. In addition to the above-mentioned protection measures, trained dogs can be used to detect

explosives. After passing this stage, the passenger is directed to a dedicated zone only for travelers, and there the last time before departure, the tickets and documents are checked. It is also noteworthy that the control of flight crews or airport staff is carried out on the same principles as the verification of passengers and their luggage. In addition, each must show a crew member identification card or a valid pass. Considering the above-mentioned stages of the passenger's movement at the airport, it should be recognized that each place may be susceptible to interference from outside. The first of these is the parking lot, which everyone has access to after paying the fee. Thus, in the case of planning an unlawful attack on an airport area, attackers can start an attack at this point by, for example, firing people within their range or placing explosives. That was the case with the attack on Atatürk airport in Istanbul in 2016 when one of the terrorist targets was an airport parking lot. Secondly, the passenger terminal is often the target of a terrorist attack due to the ease of access and lack of sensors before entering the zone, which would sense metal or explosives. In 1985, at the same time, almost two acts of terrorism were carried out on passengers in the public area. The assassins opened fire on people waiting for a flight. After these events, the victims' families tried to seek compensation claims from the air carrier pursuant to art. 17 of the Montreal Convention [14]. Nevertheless, ensuring security at all stages of the passenger's journey may be difficult due to circumstances that cannot be foreseen:

- possibility of cooperation of the person planning to assassinate with another airport employee,
- development of technology used by terrorists in the construction of explosives, which cannot be detected by metal detectors or X-ray equipment,
- the possibility of a suicide act by a crew member, e.g. the Germanwings 9525 flight disaster in 2015.

### **Protective measures applied on board aircraft**

In addition to safety mechanisms at airports, there are systems to ensure safety on board an aircraft. Due to the increased migration and the possibility of movement of people who are suspected of terrorist activity or belonging to such an organization, the international community has decided to implement: Council Directive No. 2004/82, which obliges air carriers to send additional information about passengers (API-Advance Passenger Information) [15] and the Directive of the European Parliament from 2016 [12] PNR data (Passenger Name Record - Register Data of Passengers' Names) [21]. At this stage, it should be emphasized that the Polish Aviation Law (Articles 202a-202d) implemented the obligation to provide information on passengers on the base of aircraft that will land on the territory of the Republic of Poland. Thus, the air carrier after the check-in of passengers of a specific flight, not later than at the moment of take-off, informs the persons on board to the Chief of the Border Guard, who stores and deletes data (no later than 24 hours after their transfer) . In addition, the means to ensure safety on board the aircraft are:

- placing armed officers,
- training of flight crews in the event of unlawful interference from outside,
- separation of space for the crew separated by armored doors.

After the attacks on the World Trade Center, it was decided to install a panzer door separating the cockpit from the rest of the plane. In addition, a camera was placed in the cockpit, which provides a preview of people who want to enter the cockpit. Both the cabin crew and the pilots know the access code to open the door. However, entering the appropriate string of digits does not allow for getting inside because in the cockpit there is also the mechanism unlocking the door and it is the pilots who decide to whom they open. An important event that triggered a discussion regarding the functioning of the aforementioned security was the Germanwings 9525 flight disaster in 2015, when the second pilot, after

leaving the cockpit by the aircraft commander, committed a suicide by directing an airplane to the Alps. As a result of this accident, 150 people died, and the European Aviation Safety Agency recommended that during each phase of the flight in the cockpit, there should be at least two people, including one qualified pilot. It should be noted that many lines have introduced such regulations in their internal regulations. The main purpose of introducing this type of provisions is to avoid a situation in which only one person who can bring danger to the machine remains in the cockpit. When leaving the cockpit by one of the pilots, his place shall be taken by a member of the cabin crew who is authorized to take appropriate steps to prevent the unlawful activities of the person at the controls. In this way, air carriers are trying to increase the protection of passengers who are on board the aircraft.

### Summary

Considering the ubiquitous phenomenon of terrorism, it should be stressed that the goal of the international community is to combat all unlawful acts directed to people or property of the state. It is not without reason that all recommendations for improving safety are the result of air accidents. At that time, new regulations have been introduced, which were proposed by the Committee on Aircraft Accident Investigation. However, air transport is still one of the safest modes of transport. This fact is made up of many factors, including security measures at airports or on board an aircraft. By creating and supplementing legal regulations in conventions, protocols or ordinances, countries adapt their provisions to existing conditions. As already mentioned above, each stage of the passenger's journey at or outside the airport is vulnerable to external interference, therefore it is necessary to combat air terrorism with all available legal and technical means. There is no doubt that with the development of techniques used by terrorists, civil aviation will apply new methods of passenger protection.

However, it cannot be assumed that current systems for combating aviation terrorism are sufficient to prevent changes. An important issue, possible to consider is the installation of metal sensors at the entrance to the airport parking lot, or to a publicly accessible hall. In addition, one should consider how to prevent terrorists from terrorism on systems installed both on the aircraft and in the port, because such interference may disrupt the functioning of the airport, or the flow of information between the control tower and the plane. At the same time, it is right to say that aerial terrorism can be done by means of a drone that will be remotely controlled by a person wanting to make an attempt. All situations presented would require detailed regulation that would introduce legal and technical measures to combat air terrorism, manifested in various forms.

To sum up, according to the Newton's dynamics principle, each action causes a reaction [13]. Thus, by transferring it to the ground of civil aviation, it can rightly be pointed out that every unlawful act of terrorists will entail joint actions of states whose main objective is combating air terrorism and increasing the safety of air transport.

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