

# Security issues :

Responses given before and after  
9/11 and their influence on privacy  
and civil liberties

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## Aviation has always been seen as a danger

- First decree, in France, in 1794, a few months after the first flight of the Mongolfier Brothers' balloon
- Initially seen like as catastrophic instrument of war
- Guernica bombing, WWII and the Dresden and Hiroshima and Nagasaki bombing urged a need of regulation, and peaceful use of aviation
- ⇒ Signature of the Chicago Convention in 1944

# Terrorism and Hijacking

- Many hijackings during the 60s, 70s and 80s  
Means to claim political rights, religious frustration, asking for ransom or even travel for free
- Unequal punishment depending on where the attack occurred and the nationality of the offenders

# Security situation before 9/11 - 1



## In the US :

- - Despite the Memorandum of Understanding signed between Cuba and the US in 1973, which partially stopped the hijacking wave, Cuban hijackers were condoned until recently (2003) ≠ other nationalities punished  
⇒ unequal treatment favoring some terrorists depending on their nationality, and creating a kind of incentive for some of them
- - The screening system was inefficient and sometimes totally absent, including in the biggest and busiest airports
- - Screening was carried out by the airlines, which most of the time were delegating this task to private companies at the lower bid (i.e. lower cost, training and capacity of detection of threat + very high turnover (more than 100% a year, and until more than 400% in some airports))



## Security situation before 9/11 - 2

### In Europe :

- Europe had to face many terrorist attacks on its own soil, due to the many European regions which claim independence + Decolonization process after WWII generating violence
- Many cases of hijackings and terrorist attacks led Europe to adopt various treaties and conventions :
  - European Convention on the Suppression of Terrorism, 1977 (increase collaboration, favorise extradition and consider that hijacking can not be consider anymore as a political offence, that can allow asylum)
  - Bonn Declaration signed in 1978, between UK, Germany, Italy, France, US, Canada and Japan to suspend all the flights to and from a nation which does not want to extradite or prosecute a hijacker
- Lockerbie Bombing – 1988 :
  - European countries realised that they should focus more on baggage and passenger screening and not let baggage travel without the passenger, who missed the plane
  - Random searches

## Situation after 9/11

- During the days following the 9/11 attacks, all the big aviation countries took emergency measures: USA, Canada, and Europe, for example, reducing therefore liberty of movement, by increasing passenger and baggage screening



## Passenger Screening 1/2

- Body check – Patting down :
  - Random searches vs. Patting down only when the metal detector alarm is set off
  - Problem of the “choice” of the passengers to be randomly searched. Should not be based on nationality, color, religion, gender, but unfortunately, experience shows that it is often the case
  - Should always been done by an officer of the same gender. Problem : Some countries do not respect this rule, and therefore, the passenger can feel that it is a sexual aggression

Annex 9 § 6.21 of the Chicago Convention stipulates :

*Note 2.— Privacy should be assured when a thorough physical search is to be carried out. If special rooms are not available, portable screens may be used for this purpose.*

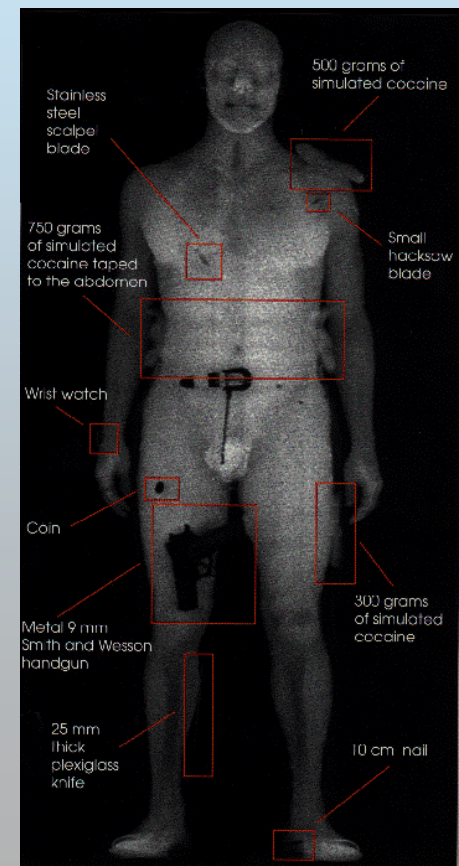


# Passenger Screening 2/2

- X-ray bodily screening : the new technology allows the screeners to see underneath the clothes
- Big problem of privacy especially with people sensitive for cultural or religion problems.
- Exposition to radiation can be dangerous for passengers especially frequent flyers
- Annex 9 § 6.21 of the Chicago Convention stipulate :

*Note 1.— The use of radiological techniques for screening passengers should be avoided.*

*Note 2.— Privacy should be assured when a thorough physical search is to be carried out.*







## Liquids and Gels

- Legislation more or less similar in the main aviation countries, but all of them do not recognise duty free purchases made in the other countries/regions, when screening passengers. If the passenger has a connecting flight s/he could not board w/out registering the purchases that s/he made at his/her previous stop.
- Lack of international recognition of the measures taken by other countries which leads to surreal situation at some connecting airports.
- The only solution for a passenger is either to register another baggage with its purchases inside while connecting, or to give/consume what s/he brought a few hours ago
- A uniform system is required, as well as better information to the passenger



## PNR (Passenger Name Record)

- One hour before the flight, the airline must send the PNR to the US authorities. Between 5 to 39 different fields are required, depending on the country of origin
- The other information is not mandatory, but if the passenger gives them, the airline/travel agent has the obligation to transmit them
- Is kept at least 3 years and half (can be kept up to 13 years in a “dormant file”)
- The US took the engagement not to make a commercial use of the information, but the problem is who can access this information ? No clear answer – Any authority who asks for it, basically
- Problem of illegal access to information regarding privacy and sensitive data
- Interest of asking for PNR ? The US government argue that it has helped to catch thousands of “criminal and immigration offenders”. But how many terrorists ? Wasn’t the sole goal of such a measure ?



## RFID (Radio Frequency IDentification)

- Frequent flyers flying in the US can use RFID card to access fast lanes and facilitate their trip - Trusted Traveler card issue to expedite passengers flow
- Required to give biometric data + background check and interview
- The US Privacy Act of 1974 *requires that a federal agency, "maintains in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;"*
- *The Privacy Act requires that a federal agency, "maintain in its records only such information about an individual as is relevant and necessary to accomplish a purpose of the agency required to be accomplished by statute or by executive order of the President;" - The Intelligence Reform and Terrorism Prevention Act of 2004*<sup>[1]</sup> *establishes an "information sharing environment" [ISE] between intelligence gathering agencies, federal, state and local, and requires the President to ensure it is created "in a manner consistent with national security and with applicable legal standards relating to privacy and civil liberties".*<sup>[2]</sup> *The ISE shall incorporate protections for individuals' privacy and civil liberties.*<sup>[3]</sup>

*The Act also established a Privacy and Civil Liberties Oversight Board, consisting of five members appointed by the President.*

<sup>[1]</sup> Public Law 108-458. <sup>[2]</sup> 6 U.S.C. § 485(b)(1)(A). <sup>[3]</sup> 6 U.S.C. § 485(b) (2)(H).

- Paul S. Dempsey "Privacy Issues with the Use of Smart Cards "



## No Fly List

- Several thousands of “false positive” in the US, per day
- Would Osama Bin Laden fly with his own name and true passport ? Would he fly without cutting his beard and hair and without dyeing this latter ? There is almost no chance at all...
- Nelson Mandela was on the U.S. No-Fly List. Condoleezza Rice had to formally apologize in April 2008 and remove him in July 2008
- April 23, 2008 the Director of the U.S. Federal Air Marshal service had to issue a directive after air marshals had been denied entry to flights they were assigned to protect when their names matched those on the terrorist no-fly list.



## Visa Waiver Program

- Visa Waiver Program : citizens of the countries that are not required to get a visa for going to the US shall register online since January 12, 2009 in order to get a 2-year authorisation (ESTA)
- The online declaration only allow boarding and is not an authorisation to enter the US territory
- The same questions as the ones on the green paper form are asked
- Problem : would anybody planning to go to the US declare that s/he is a (former) criminal ?
- Problem of privacy raised by the online declaration : the applicant formally renounce to all its rights to privacy and to appeal in case of refusal, except asking for asylum
- The declarant can be tracked (place of connection, previous website visited...)
- The “green form” has not been withdrawn. The passenger shall complete it each time that s/he travel to the US. The unofficial reason is that “for the moment, we do rely on the online declaration”
  - why imposing 2 to 3 times the same procedure and make the passenger lose his/her precious time ?
- Even with all this information, it is now required that each passenger gives his/her biometric information (fingerprints of both hands + eye iris)



## Armed Marshal / Armed Pilot

- Is a flight safer with an armed marshal on board ?
  - Case Rigoberto Alpizar (Costa-Rican born US Citizen) shot at Miami International Airport on December 7, 2005, by 2 air marshals

➔ Is it the role of a pilot to be armed?

➔ Shouldn't he pilot instead ?





## Problems raised by Alpizar's case and more generally the “licence to kill” given to Federal air marshals and pilots by the law

- Article 6, paragraph 1 of the International Covenant on Civil and Political Rights (ICCPR) states that “Every human being has the inherent right to life. This right shall be protected by law. No one shall be arbitrarily deprived of his/her life”
- Office of the High Commissioner for Human Rights reminded during the sixteenth session of the Human Rights Committee of the United Nations, in 1982 : “The right to life enunciated in article 6 of the Covenant has been dealt with in all State reports. It is the supreme right from which no derogation is permitted even in time of public emergency which threatens the life of the nation (art. 4). However, the Committee has noted that quite often the information given concerning article 6 was limited to only one or other aspect of this right. It is a right which should not be interpreted narrowly”. *General Comment No. 06: The right to life (art. 6) : . 30/04/82. CCPR General Comment No. 6. (General Comments)*



## Conclusion

- Air security helps to safen flights against acts of unlawful interference
- Impossible to measure the real impact of these measures vs. economic and privacy and civil rights loss
- Necessity to make uniform the international measures, and to recognise the different measures taken by other countries/regions to facilitate the passengers' experience
- Need to reduce loss of time on short haul, in order not to discourage passengers to find another alternative, to safeguard the airline industry, especially during the economic turnover
- The best “security measure” is to ensure peaceful relationships, among the countries around the world and democratic progress worldwide
  - without frustration and political and religious rancor, less people will be tempted to contest and commit criminal offences to raise their voice



Thank You !

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