

Political resilience and EU responses to aviation terrorism

Javier Argomaniz and Peter Lehr

University of St Andrews

CONTACT DETAILS –Dr Javier Argomaniz, Handa Centre for the Study of Terrorism and Political Violence (CSTPV), School of International Relations, University of Saint Andrews, Arts Faculty Building, Library Park, The Scores, ST Andrews, Fife KY16 9AX, Scotland, UK; Dr Peter Lehr, Handa Centre for the Study of Terrorism and Political Violence (CSTPV), School of International Relations, University of St Andrews, Scotland, UK

ABSTRACT- In this article, we examine how European authorities have responded to reported threats to aviation resulting from individual terrorist tactics. We do so by applying the notion of political resilience and drawing on Palonen’s ”policy, polity, politicking and politicization” model as well as on Malcolm Anderson’s concept of ”politics of the latest outrage”. We argue that the EU response to aviation terrorism has created polity transformation and generated a long list of new policies but has also in the process become politicised and subject of politicking, with some high-profile measures being criticised for having a deleterious impact on passengers’ rights.

Introduction

The aim of this paper is to apply some of the ideas developed in the conceptual model presented in the introductory section of this volume to explore how the European Union has responded to a series of specific terrorist threats. More particularly, the main concern in our analysis is to examine the reaction of European authorities to reported threats to aviation resulting from individual terrorist tactics. We will analyse in the process how the European aviation security policy dossier has evolved in reaction to the loopholes revealed by the incidents that supposedly required an additional layer of protection. Finally, we will draw on Palonen's "Four Times of Politics: policy, polity, politicking and politicization"¹ as well as on Malcolm Anderson's concept of "politics of the latest outrage"² in order to better understand how notions of resilience can be understood in practice in the context of European aviation security policies.

It is important to note that it is not our goal to provide a comprehensive listing of all the initiatives that the EU has produced in this field, nor to discuss aviation security initiatives prior to 9/11 (for a short list, see table 1). Rather, we shall focus on those initiatives that have a clear association with the particular incidents, i.e. initiatives where it can be demonstrated that they emerged as a direct reaction to the events and that they originated from European actors either at the domestic or EU levels. In principle, this means that some important – and controversial – mechanisms such as the EU-US Passenger Name Records (PNR) agreement would fall outside the scope of the paper.³

Table 1: Major Pre-9/11 International Initiatives to Secure Civil Aviation⁴ ABOUT HERE

In addressing these objectives, we will apply the definition suggested by Malkki and Sinkkonen in this special issue. We therefore understand political resilience in the context of European civil aviation security policies as “the way that continuity and transformation take place in the face of specific endogenous or exogenous shocks in all aspects of political life”.⁵In other words, the capacity of the political system [*in this case, European aviation security regulations*] to proactively face the threat and recover through ”robustness” and continuity or changes in polity, policy, politicization or politicking.

The above definition explicitly incorporates the two key dimensions of the traditional understanding of resilience: reducing vulnerability (resilience as part of critical infrastructure protection) and facilitating recovery (resilience as part of response management). Our analysis will mainly focus on the former. This is due to the fact that the measures introduced in the period under study have tended to prioritise target hardening. In other words, they have aimed to deter terrorist attacks by raising the security standards to the extent that such attacks would be – in theory – prohibitively difficult and/or costly. Clearly, due to the potentially huge loss of life in the case of a successful terrorist attack on an airliner, both international and domestic aviation security systems mainly focus on preventing incidents in the air. Measures whose goal it is to return the system back to normality can of course be imperative when dealing with terrorist strikes in airports on the ground.⁶ In sum, when considering the four phases of resilience described by Boin, Comfort and Demchack (mitigation/prevention, preparation, response/consequence management and recovery/aftermath politics) we would like to clarify that our analysis will focus squarely on the first stage.⁷

We also acknowledge the fact that when it comes to normative changes and adaptation there are different views on whether they are good or bad.⁸ Hence we will not attempt to offer an assessment of the value of specific European responses (i.e. describe them as ”positive”or ”negative”) but we

will instead reinforce the idea that there has been a lively debate at the European level regarding the efficiency and proportionality of some of these measures, and that due to conflicting interests, there is no consensus amongst European institutions themselves about whether some of the initiatives – as originally proposed – have been a “good” or a “bad” thing. As we will see, the EU has been far from being a unitary actor in this matter.

For this reason, it is important to precisely determine not only the position of the key EU institutional actors (the Commission, Council and the European Parliament (EP)) but also the nature of the “resilience response”: is this to ensure the robustness of the system (resilience as resistance and maintenance), to make superficial amendments that do not affect the fundamental character of the regulatory structure in place (change at the margins) or to completely overhaul the system (openness and renewal)?⁹ As we will argue later on, all these facets have been present to varying degrees in the European response.

In addition, and as suggested in the introduction of this special issue by Malkki and Sinkkonen, we will draw heavily on Palonen’s “Four Times of Politics” typology (*policy*, *polity*, *politicking* and *politicization*) when discussing the political context that led to the emergence of the EU regulatory framework. Palonen understands *policy* as the redirection of resources and efforts towards certain goals, *polity* as the space where political activity occurs, *politicking* captures the performative nature of politics and *politicization* the act of naming something as an object for political debate. We will engage more comprehensively with these terms when it comes to the application of the model in the discussion section.

With these conceptualisations in mind, the argument that we are making is that the field of aviation security has evolved in a partially uncoordinated manner following external shocks to the system

represented by high-profile terrorist attacks and plots. Or in the words of Sweet, attacks on commercial aviation have “received sporadic intensive attention, usually after some weighty tragedy.”¹⁰ Of course, this case has been already made by one of the authors in relation to EU counter-terror policies more generally¹¹ but what this contribution does is to complement and enrich this insight with a set of constructive notions associated with the idea of political resilience. The paper is structured as follows: we will start by presenting an overview of incidents that have most significantly contributed to shape European regulation in this field (see table 2 for a timeline). We will then proceed to describe the specific policy responses adopted by European institutions in response to these terrorist acts. We will apply the model next, clarifying how the concepts of policy, polity, politicking and politicization can help us to understand the evolution of the European regulatory framework and the associated political debates. Finally, we will conclude with a few words on the explanatory value of the political resilience model.

Table 2: Timeline of Incidents – ABOUT HERE

Case Studies

September 11 2001

On September 11 2001, Al Qaeda carried out the most lethal terrorist attack in human history so far by turning four hijacked planes into flying suicide bombs – two of which (American Airlines Flight 11 and United Airlines Flight 175) brought down the Twin Towers, while one (American Airlines Flight 77) badly damaged the Pentagon.¹² The fourth hijacked plane (United Airlines Flight 93) crashed near Shanksville, Pennsylvania, when hijackers and passengers fought over control of the cockpit. This series of attacks cost nearly 3,000 people their lives, and inflicted economic damages and disruptions amounting to several billion of US dollars¹³ – or even several trillion US dollars if one takes the costs of the ensuing Global War on Terrorism into consideration.¹⁴ However, this

attack did not only establish suicide hijacking as the latest phenomenon of aviation terrorism but also led to a profound overhaul of aviation security.

Prior to 9/11, aviation security measures were based on the assumption that terrorists would not be willing to sacrifice their own lives, which is why, apart from screening procedures with variable degree of alertness and training of security personnel involved, passenger-baggage reconciliation was one of the keystones of security measures.¹⁵ The other one was the computer-assisted passenger pre-screening (CAPPS). Developed in 1996, CAPPS was meant to flag up suspicious passengers for special security screening measures.¹⁶ Interestingly, in the case of 9/11, CAPPS worked quite well: eight of the 19 hijackers were flagged up by the system. However, the only special measure taken was monitoring them until they boarded only to then load their baggage as usual. Not even their hand baggage was more closely inspected. Had the hijackers had a Lockerbie-style attack in mind, this would very probably have been prevented. Against suicide bombers however, this post-Lockerbie security regime proved to be ineffective.

Following the attacks, the US created the Transportation Security Administration (TSA) to strengthen the security of its transportation systems.¹⁷ The federal agency was established through the Aviation and Transportation Security Act, which transferred airport screening duties from private airlines to this new body.¹⁸ Among the first measures adopted by the US authorities was restricting the type of items that could be taken on board, now excluding all kinds of scissors, knives or any other potentially dangerous objects that could serve as a weapon. A second measure was the introduction of intrusion-proof cockpit doors in order to prevent hijackers from entering, followed by a routine deployment of so-called sky marshals on a number of flights that were deemed high risk. Both measures however proved to be controversial: some pilots associations (for example the British Airline Pilots Association, BALPA) argued that intrusion-proof doors would undermine

their control over the aircraft and could potentially be dangerous¹⁹, while airlines themselves were reluctant to reserve income-generating first or business class seats for a sky marshal – these usually being the seats nearest to the cockpits.²⁰ Thirdly, and following the 9/11 Commission's recommendation, the USA also introduced an additional security measure with regard to the pre-screening of passengers: the Electronic System for Travel Authorization (ESTA) as a requirement for passengers travelling from visa-waiver countries.²¹

The security response soon spilled over onto the international level. Before the 9/11 attacks, intergovernmental arrangements on aviation security were generally agreed at the International Civil Aviation Organisation (ICAO), an UN agency,²² whereas the European Union (EU) lacked formal competencies in this field. Since ICAO produces mostly non-binding recommendations, the level of harmonisation regarding air safety in Europe was rather limited: each member state had its own regulatory framework.

Under the impression of 9/11 however, aviation security rapidly became an urgent priority on the political agenda of EU member states. European governments soon realised that in order to ensure a swift response that would be widely and efficiently carried out across Europe, they needed to "Europeanize" them. Thus the safety of civil aviation was placed under the aegis of the European Union Transport Policy dossier. This decision had significant practical implications. It meant that rather than being part of the former Third Pillar²³ that dealt with Internal Security matters and was mostly intergovernmental in their decision rules, aviation security was regarded instead as a First Pillar matter. By placing these types of policies under the supranational EU Common Market framework, Member States were ensuring that EU institutions could use the First Pillar strong enforcement mechanisms²⁴ and binding legislation (EU Regulations and Directives) to guarantee the consistent implementation of security measures in European airports. Making aviation security a

Community policy also allows the European Commission to take a visible role: the supranational decision-making process means that it has the exclusive right of initiative, that is to say, it is the only European institution that can formally introduce policy proposals in this area. Nonetheless, Commission proposals must be first approved through qualified majority voting by an Aviation Security Regulatory Committee (AVSEC) where national representatives meet. The Community pillar decision-making also involves the Council of Ministers and European Parliament (EP) as co-legislators, which, as we will show later, has had important implications for the EU response.

The policy debates in Brussels were further accelerated by the shoe bombing plot of 22 December 2001, just three months after the events of 9/11. In that incident, "shoe bomber" Richard Reid attempted to detonate an explosive charge hidden in his trainers – an attempt that failed because the explosives had got humid through sweat. Passengers also travelling on this American Airlines Flight 63 from Paris to Miami could overwhelm Reid before he could do any harm.²⁵ Although improved passenger scanning by way of full body scanners was discussed after this event, the only additional measure introduced to the already vastly improved security measures in the wake of the 9/11 attacks was the requirement that passengers had to put their shoes on the belt for scanning if asked to do so.²⁶ However, this failed plot further demonstrated to what great length Al Qaeda would go to attack airliners as arguably one of the most iconic and symbolic targets for terrorists.

Hence, the combined effects of the 9/11 shock and the "shoe bomber" plot of December 2001 encouraged the Commission to prepare a policy proposal leading to the adoption in 2002 of the first set of European common rules in aviation security.²⁷ The document "followed almost to the letter" the international standards set by the ICAO.²⁸ In order to achieve the objective of increasing the resilience of the aviation sector, this EU Regulation called for Member States in 2002 to adopt programmes on national civil security, quality control and training and to create a national authority

responsible for the coordination and monitoring of such programmes. It also listed a set of provisions that had to be met by airport authorities, operators and airlines. The detailed security requirements referred to an extensive list of separate but interrelated elements: the design or layout of airport buildings; control of access to sensitive areas of airports and aircrafts; passenger and baggage screening; searching and checking of aircrafts; controls for cargo and air carrier suppliers and the training and recruitment of relevant staff. In addition, it outlined a set of guidelines for security equipment (metal detection, X-ray) and a classification of prohibited articles.²⁹ All these provisions had the overarching goal to raise minimum common standards of security in European airports. Member states' governments also retained the right to implement more stringent measures if they deemed them necessary. Most consequentially, this European law provided the Commission with significant executive powers, which is rare in EU security policies: it allowed them to carry out joint inspections on the ground with national representatives to ensure that these Community rules were properly applied by individual airports.³⁰

As shown above, the 2002 regulations undoubtedly represented a comprehensive package of measures. Yet, given the existing political context, the 2002 regulation was approved with little political debate. Furthermore, when these rules were amended in 2005, it was against a backdrop of a hectic period of European counter-terror decision-making brought about by the terrorist attacks in Madrid and London. Effectively, the inspections carried out by the European Commission had revealed a series of shortcomings: there was a need to make easier to modify the more technical aspects of the legislation, some common requirements required clarification and rules needed to be extended to freight and in-flight security.³¹ As a result, changes were proposed in the screening of passengers, training of staff and security checks on aircraft. The amendment of the security rules was also used to expand the Commission competencies to cover in-flight security measures and air traffic from third countries. When an overhaul of the legislative framework was finally adopted in

2008³², the regulation included new provisions in areas such as access to cockpits or the presence on board of "sky marshals".³³ Therefore, gradual reforms to the rules have been continuously carried out during this period and the last significant amendment of the rules was conducted in 2010.³⁴

2006 liquid explosives plot

In parallel to the discussions on the amendment on EU common rules, the discovery of the transatlantic airliner plot revolving around liquid bombs in August 2006 led to further amendments in the form of ad hoc, community-wide measures: on 9 August 2006, British police arrested 24 persons suspected to plot an attack on ten transatlantic airliners by way of smuggling "liquid bombs" on board.³⁵ The plan revolved around peroxide-based liquid explosives (mixed with orange drink powder) filled into 500-millilitre soft drink bottles via syringes in order not to damage the original seals of the bottles, thus pretending they were not used. Due to timely intelligence, this plot could be nipped in the bud before the terrorists were prepared to strike.

The transatlantic airliner bombing plot was actually already the second time that liquid bombs were meant to be used to bring down passenger airliners: in 1995, a similar Al Qaeda-related plan to destroy up to twelve transpacific airliners was discovered in the Philippines.³⁶ At that time, the discovery of this rather sophisticated plot had no impact on aviation security. The renewed attempt to use liquid bombs however resulted in immediate and very severe security measures. In the UK for example all hand baggage except for wallets, passports or IDs and travel documents were initially banned. Action however did not stop there: the UK then rushed to take this matter to Brussels and, in September 2006, the EU member states agreed to request the Commission to adopt an EU level ban on most liquids in hand luggage. Discussions at the Council of Ministers revolved around whether the liquid bomb that the cell was attempting to smuggle on board would have been

powerful enough to cause catastrophic damage and to destroy the targeted airliners. Reports from British intelligence services helped to convince other government representatives and the internal debate mostly concentrated on the extent of the ban and the quantities of liquids to be restricted.³⁷ The decision was approved within less than a month, which equals to lightning speed for Brussels standards. An apparent cost that came with this swiftness was that no process of consultation with private actors, including commercial airlines or airport associations, was undertaken. The Commission quickly approved the ban and on 4 October an EU regulation controlling the movement of liquids through the screening checkpoints was adopted for that purpose.³⁸ It entered into force on 6 November 2006.

As in the case of the UK, the EU decision allowed individuals to bring on board a maximum of 10 containers of less than 100 millilitres each. These containers had to be held in a 20cm square transparent, re-sealable plastic bag and put in a tray for inspection – both visual and per scanner. A few exceptions applied: liquid medicines or baby milk for example, were exempted under certain conditions.³⁹ Originally, those measures were restricted to planes departing from EU territories but it eventually led to a rapid worldwide spread of the norm. The adoption of the rules in Europe motivated other countries to imitate this response and American and British lobbying efforts resulted in a non-binding recommendation by the ICAO for all members to also apply the ban.⁴⁰

This legislation was later renegotiated and the EP has used its prerogative to request an evaluation. As a MEP from the centre-right EPP-ED group pointed out: "Nobody seems to know – or care – whether these rules are efficient, as no evaluation has taken place and no results of such evaluations have been published."⁴¹ On 5 September 2007, MEPs adopted a Resolution calling on the Commission to review and, if necessary, repeal the rules. Finally the EP in 2010 reached a compromise with the Commission and the Council to lift the ban in April 2013, with the

understanding that scanner technology would soon be capable to distinguish liquid explosives from innocuous liquids. However, due to concerns from EU governments and the airline industry regarding the effectiveness of the new liquid-screening technology – and following lobbying efforts from the French and British governments (both of which had forces engaged in the Libya)⁴² – only a small and partial lifting of the ban was implemented. The complete phase-out was postponed to January 2016.⁴³ In a meantime a process of assessment that included the discussion of a further gradual lifting of the rules would be carried out.⁴⁴ As part of the process, a new rule was enacted in January 2014 for European airports to introduce special liquid explosive detection equipment for the screening of liquids, aerosols and gels.

Crucially, the EP has always been critical of the ban for a number of reasons: popular concerns due to the inconvenience it caused passengers and the doubts regarding the proportionality and effectiveness of the measure. Furthermore, the restrictions have been strongly criticised for resulting in confusion and delays at European airports, where thousands of litres of alcohol and perfume were reportedly confiscated from passengers every week.⁴⁵ Of course, European airlines and airport companies who were unhappy about the costs associated with the measure have also lobbied European MPs hard.⁴⁶

2009 underwear bombing plot

The controversial debate on the pros and cons of introducing full body scanners (backscatter scanners or millimetre-wave scanners) that started in the aftermath of the failed December 2001 shoe bombing attempt gathered pace again after the underwear-bombing plot of Umar Farouk Abdulmutallab. On Christmas Day 2009, the Nigerian national attempted to detonate an explosive charge⁴⁷ hidden in his underwear on board of Northwest Airlines Flight 253 from Amsterdam to Detroit on the final stage of this flight.⁴⁸ Fortunately, like Reid before, Abdulmutallab failed to

ignite the plastic explosives due to their exposure to humidity, and could hence be subdued by other passengers. Al Qaeda in the Arabian Peninsula (AQAP) claimed responsibility. Again, Abdulmutallab had been flagged up by computerized pre-screening, but nothing untoward was found at that time.

The event did certainly focus minds on the limits that airport metal detectors with regard to finding non-metallic threat items on persons.⁴⁹ As an immediate reaction, additional screening measures were introduced in a number of airports (notably Schiphol and Heathrow) for transatlantic flights. In a demonstration of political solidarity, in January 2010, the US and the EU signed a joint declaration in which they pledged to help enhancing global aviation security measures.⁵⁰

Meanwhile, EU member states started to reconsider the inclusion of the body scanners on the EU list of scanning techniques since previous efforts to achieve so had failed. The EP had long opposed the measure mainly on these grounds: firstly, they thought they could pose health risks to passengers since X-ray backscatter systems, a type of scanners used in the US and UK, exposed passengers to ionising X-ray radiation. Secondly, the more revealing body scanner images violated privacy rights and could open the door to abuses. The European Data Protection Supervisor (EDPS), the Article 29 Data Protection Working Party and the Fundamental Rights Agency were also concerned that the introduction of security scanners could have a great impact on data protection of passengers.⁵¹ The Commission itself acknowledged that a number of fundamental rights could be violated in the context of body scanners.⁵²

To prepare a European response, and following a request from the European Parliament, the Commission issued a fact-finding report on this technology.⁵³ The document was not a product of independent research but it rather provided a collection of national assessments. The Commission

then adopted a communication on 15 June 2010 on the use of security scanners at EU airports. The document offered as a rationale for the proposal the fact that the "different standards of scanners currently deployed in Europe bring a serious risk of fragmenting fundamental rights of EU citizens, impeding their rights of free movement and escalating their health concerns related to new security technologies".⁵⁴ The communication therefore attempted to address the national divergences that the uncoordinated increased use of this technology across national borders was generating by adopting in response a harmonised approach.

Following from this communication and negotiations with the European Parliament that led to a number of modifications, in November 2011 the Commission adopted a legislation including security scanners as a further eligible method in the common list of screening and controlling technologies, allowing airports the voluntary deployment of scanners in security checkpoints.⁵⁵

2010 toner cartridge bombing plot

In October 2010, Saudi Arabian intelligence sources informed Western services that packages containing 300 to 400 grams of plastic explosives were on board of various cargo planes leaving from Yemen. Transferring to US-bound flights at airports in Germany and the UK, the bombs were hidden in the toner cartridges of Hewlett-Packard laser printers. It remains unclear whether cargo planes or passenger planes were targeted since much airfreight is actually transported by the latter. An alternative possibility is that the bombs were meant for synagogues in various US cities. Again, AQAP claimed responsibility. In their view, the operation still was a success, as they pointed out in a communiqué: even though it failed, it forced Western countries to spend "billions of dollars in new security measures. That is what we call leverage."⁵⁶

Indeed, many aviation security specialists had already warned that airfreight in general and cargo planes in particular were still highly vulnerable to bombing attacks even in a post-9/11 environment: compared with passenger planes, security measures taken here are rather lax. In fact, although the European common rules introduced in 2002 formally addressed the security control on cargo, the strengthening of this aspect of aviation security only became a political priority after the discovery of the toner cartridge bombing plot.

The first consequence of the 30 October plot was an important institutional change: the creation of a High-Level Working Group.⁵⁷ This high-level group on air cargo security set a number of recommendations in a report that were quickly endorsed by the Commission and the Council.⁵⁸ Firstly, they suggested new harmonised EU cargo and mail security controls. This would involve new rules to facilitate more stringent screening of cargo originating from outside the EU. In response, the Commission produced legislation requiring air carriers to ensure that cargo from third countries would either come from a trusted source or be screened for explosives or flammables before it was allowed to fly into the EU. Moreover, in "high risk" locations enhanced screening for cargo now was required by way of a combination of two or more screening measures.⁵⁹ Interestingly, three months after the foiling of the plot, the Commission undertook an assessment mission to Yemen and found that "several additional security measures had been put in place at the Sana'a airport at the time".⁶⁰

In parallel, Member States were encouraged to accelerate the implementation of the EU's system of supply chain security. This was designed as a regime to approve trusted operators ("consignors") who would work as regulated agents in this sector. The Commission and relevant national authorities would also have to strengthen the compliance monitoring of the cargo and mail rules,⁶¹ a recommendation that resulted in an increase on the number of cargo security inspections. They

would also need to improve staff training, which was addressed with more training courses for national aviation security inspectors. Furthermore, they were requested to invest more in detection technologies and screening research so the Commission did eventually include cargo screening in its calls for proposals within the Framework Programme for EU Research and Development.

Secondly, better intelligence and threat information sharing was also seen as a priority. A common EU threat assessment capability would have to be developed. The result was a risk assessment system based on information about threats that national governments provided to the European Intelligence Analysis centre (INTCEN) at the European External Action Service (EEAS) and informed by vulnerabilities identified by the industry.⁶² Interior ministers from MS were meant to sit together to discuss and define the threats, assess vulnerabilities and categorise the level of risk (low, medium, high).⁶³

Finally, the Working Group also called for a global approach involving as a first step the swift implementation of ICAO's latest revision to Annex 17 enhancing cargo security rules. In line with this suggestion, the EU did also collaborate with the US in committing the ICAO to produce a declaration encouraging states to invest more efforts and resources on enhancing air cargo and supply chain security. Following from this, mutual recognition between the EU and US air cargo was also agreed. With the objective of establishing one-step controls on US-bound flights, the relevant US authorities were also willing to collaborate with the Commission and the European Civil Aviation Conference.⁶⁴

It is interesting to note the impact of the reforms brought about by the toner cartridge plot on cooperation and collaboration. According to the EU Counter-terrorism Coordinator, the report by the high-level group "brought the transport and the security community close together and the

cooperation had reached a new level” even though currently there still is a need ”to do more for the information exchange with the industry” and ”increase cooperation with third countries”.⁶⁵ In the long term, the most important result from this process may well be a shift towards a risk-based approach, where data from different sources (both public and private) are closely integrated into a threat assessment used to inform policy. This brings greater transparency into the process and helps to address the criticism by member states regarding past decision-making, with individual MS (i.e. UK) presenting their own intelligence (i.e. on liquids explosives) in Council meetings and demanding regulatory changes (i.e. liquids ban).⁶⁶

Discussion

The European common policy of aviation security owes its existence and evolution to a series of high-profile jihadist terrorist attacks and plots that have targeted Western aviation since 11 September 2001. The sense of urgency generated in the aftermath of the incidents discussed has resulted in renewed political pressure for European actors to close potential security loopholes through Community legislation. This general attempt to strengthen resilience within the sector has brought about a piecemeal development of this policy dossier: on the one hand we have witnessed the rapid introduction of ad hoc measures, on occasion without a thorough consultation with relevant actors or, according to critics, serious consideration for the proportionality and effectiveness of the particular initiative. On the other hand, these urgent, reactive responses have generally been refined with time and the involvement of more institutional actors. It must also be noted that ad-hoc measures have been accompanied by a more measured parallel process of gradual amendment of the European common security rules introduced in 2002. Here, changes to the rules

have tended to be informed by the evidence gathered from regular inspections by the Commission and national authorities.

Before embarking on a more elaborate analysis conducted within the context of political resilience, it is important to note that a situation where the EU has become a relevant actor in setting aviation security policies in Europe is already remarkable, given the fact that internal security is a sensitive aspect of European governments' sovereignty. It is debatable whether this particular sphere of political activity would have become institutionalised so rapidly at the European level without the political pressure engendered by the external shocks that punctuated the existing policy equilibrium, triggering a wave of post-hoc reactions to major terrorist events – a kneejerk-like course of action that Anderson has called "the politics of the latest outrage."⁶⁷ By forcing national governments to communitarise this sphere of action, 9/11 led to a profound change in the *polity* of aviation security: the "complex in which the power shares are divided into legitimate and illegitimate ones".⁶⁸ Thus, through institutionalisation at the European level, the demarcations of the safety of aviation polity opened up to include new actors and decision-making processes.

We argue that this development can be seen as an example of the third type of resilience described by Bourbeau: an exercise of *openness and renewal*. It demonstrates how a new regulatory framework can be created to preserve the core purpose of the system: the protection of European passengers. The rationale behind the institutional overhaul that the communitarisation of aviation security represents is the concern for "weakest links": to guarantee the safety of passengers in inbound flights departing from other European member states requires all EU countries applying similar practices. In short, national aviation security requires neighbours sharing common security standards.

We would like to emphasise that this should not be read as member states completely relinquishing control of these policies: they not only had the capacity to introduce more stringent versions of the initiatives agreed in Brussels but they could also oversee the work of the Commission through the comitology procedure.⁶⁹ In reality, even if the Commission directorates⁷⁰ had the power to develop proposals, these have been fundamentally shaped by the work of national experts present in Aviation Security Regulatory Committee (AVSEC) with whom they work closely together.

Therefore national governments until recently had a very tight control of decision-making in this area. As Barros describes⁷¹, although the Commission had the right of initiative it also generally allowed member states to set the agenda for two main reasons: firstly, political pressure in the aftermath of terrorist incidents pressed member states into demonstrating a consensus for the necessity of enhanced security levels. This position was generally reinforced by pressure from the United States, who encouraged European governments to introduce body scanners in their airports and supported the creation of institutional structures that would facilitate the exchange of information and the sharing of good practices. As illustrated by the liquids ban case, it was also willing to work with specific member states (i.e. the UK) to facilitate the globalisation of these norms.

Secondly, the Commissions' influence was limited due to the absence of a clear agenda on the contents of the legislation, apart from usual remarks on the necessity of having a European rather than national regulatory framework. Due to the fact that the Commission and member states seemingly shared similar policy interests, the former primarily acted as coordinator and facilitator of resilience-building policies.

It was only with the growing stature and interest in these matters shown by the European Parliament that the aviation security polity experienced explicit political struggles over policy. This should not come as a surprise given that the EP often demonstrated its opposition to the most controversial elements of EU counter-terror policies. As in other instances, the EP, more specifically its Civil Liberties, Justice and Home Affairs (LIBE) Committee⁷², was critical of the proportionality and the potential negative impact on citizen's civil liberties of some of these initiatives, especially the body scanners. Thus, MEPs actively used tools such as expert hearings, resolutions and plenary votes to bring public attention to matters of effectiveness and passengers rights. The statement by the MEP from the Alliance of Liberals and Democrats for Europe (ALDE) parliament group Jeanine Hennis-Plasschaert on a September 2007 debate on the liquid ban encapsulated this position nicely:

”We have been calling upon the European Commission to ensure that the security measures in place are efficient, well balanced and implemented in a reasonable manner for passengers, airlines and airports. The measures restricting liquids aboard aircrafts do not seem to correspond to any of these criteria. The Commission has to come up with a better regulation. Exaggerations should not rule daily life of European citizens!”⁷³

In other words, the EP engaged in acts of *politicization*. In Palonen's words, they marked aviation security ”as political, as a *spielzeitraum* for contingent action”.⁷⁴ Instead of accepting the general attitude by Member States and the US of treating threats to aviation as a security matter, that is to say, outside the boundaries of standard political discussion, MEPs incorporated these measures back into the political realm.

The MEPs' exercise of opposition politics (what we can consider a particular form of performatives or *politicking*) was prevalent following the 2006 introduction of the liquids ban. Thus, a more

confrontational stance was facilitated by a changing political climate where concerns over the costs of the increased layers of security could be more freely expressed, a period where the pendulum started to swing back from "security" to "liberty" in European public discussion. As an illustration, by 2007 a large majority of MEPs were supporting a resolution to review the liquids ban even in the wake of media reports of separate terrorist plots being uncovered in Germany and Denmark. Moreover, whereas the 2002 common rules were passed without much debate with "everyone still under the shock", when the time came to update the framework there were lengthy debates leading to the 2008 reforms amongst MS, the Commission and the EP "about who has the power to do what".⁷⁵

In the context of performatives and politicking, it should be noted that Anderson's notion of "politics of the latest outrage" is based on examples of urban terrorist attacks⁷⁶ but it can also be applied to the aviation sector. In both cases, attacks result in a call for tougher action against the perpetrators from a variety of non-government sources (especially from the public at large and the mainstream media), indeed "creating an overwhelming pressure".⁷⁷ Hence, in these cases the politics of the latest outrage is clearly linked to the demand of both public and mainstream media for immediate action, possibly based on a shared concern about the random character of the attacks.

In addition, as officials from two British airports independently from each other argued⁷⁸, the importance of commercial aviation, both passenger and freight, for national economies further encourages a rapid government response. As one of them highlighted, stricter and even potentially intrusive measures are implemented –if need be– even against the resistance of airport operators and airlines, who find themselves in a difficult position: on the one hand, they also have an interest to be seen to "do something", otherwise they might lose the confidence of their customers, at least until the most recent incident slips from public memory and the "outrage" settles down.

On the other hand, they are well aware that additional layers of security can be costly. For example, in the wake of the events discussed above, airport operators had to allocate ever more money and space originally earmarked for shops and restaurants for screening zones and technologies, thus losing revenue, while airlines had to increase the price of tickets on top of allocating business or first class seats to air marshals, thus missing on potential customers.⁷⁹ The additional costs enforced on them are especially galling if they are perceived to be based on unsubstantiated threat alerts issued by various intelligence agencies – the February 2014 threat warnings issued by DHS on explosives hidden in toothpaste tubes or new ”shoe bombs” as discussed above are telling examples of how little proof is required nowadays for creating yet another terrorist threat scare.⁸⁰

Even so, it goes without saying that not every measure has been subject of conflicting interests and politicisation. European initiatives following the foiling of the printer cartridge bomb attack were approved without much criticism, for instance. We would contend that this was due to the fact that they only affected industry players in the cargo sector and thus appeared to have no visible, direct impact on European citizens’ privacy rights. Hence, the ”human-interest” factor was notably absent – which probably explains the complete absence of any media and MEPs interest.

In the light of the above, it is worth questioning the actual impact on the final policy content of the EP attempts at politicization. The comitology reforms in 2006 and the entry into force of the Lisbon Treaty gave the Parliament veto rights, which MEPs used to a certain extent to shape policy. We argue that EP action has led to *change at the margins* in case of the scanners. They were finally accepted in the list of scanning methods but the EP obtained some amendments to the legislation in the process: it gave passengers the right to opt instead for a manual search and a ban on x-ray scans was introduced due to concerns regarding their effects on passengers’ health (they had to be

replaced by millimetre wave scans).⁸¹ With regards the liquids ban example, this can be better described by the last type of resilience, *openness and renewal*, since in practice it would represent the replacement of sub-standard measures for, in paper, more effective tools (the substitution of X-ray transmission detectors for more advanced liquid-screening technology like X-ray diffraction) in order to preserve the resilience of the system.

Conclusion

The EU response to aviation terrorism has created polity transformation and generated a long list of new policies but has also in the process become politicised and subject of politicking. Active efforts by institutional actors at the European level have successfully resulted in substantial – albeit reactive and often haphazard – policy development. Yet the existing inter-institutional tensions and charged political debates have also reflected the controversial character of aspects of this response, with some high-profile measures being criticised for having a deleterious impact on passengers' rights.

On balance however, to argue that the EU is an important actor should not be understood as implying that national governments are passive actors in this area. On the contrary, they often engage in "venue-shopping"⁸²: they decide on which international arenas for cooperation to approach based on their own particular security priorities. For example, EU regulations are legally binding for member states, but ICAO recommendations are not. This would then explain for instance why the British government decided to approach the EU first: there was a need to quickly achieve similar levels of security in airports across Europe and this had to be enforceable.

The irony of course is that, in this post-Lisbon Treaty era, by escalating the response to the EU level, national governments lose their full control of the policy. Once European legislation on airport security required the approval of the European Parliament, it meant that the decision-making process became open to politicisation moves and the policies subject to conflictual relations between actors in the polity.

In sum, all this highlights the relevance of non-state counter terror actors in responding to terrorists' change of methods and operations. Decisions taken in Brussels can have serious repercussions for European counter-terrorism. In some cases, they are not only necessary for a successful reaction to terrorist innovation but they also shape the resilience of the system. In doing so, they force terrorist groups to engage in further learning and adaptation processes in what it can be defined as a continuous action-reaction cycle.

¹Kari Palonen, "Four Times of Politics: Policy, Polity, Politicking, and Politicization," *Alternatives: Global, Local, Political*, 28(2) (2003), p. 179.

²Malcolm Anderson, "Counterterrorism as an Objective of European Police Cooperation", in Fernando Reinares, ed., *European Democracies Against Terrorism. Governmental policies and intergovernmental cooperation* (Aldershot: Ashgate, 2000), p. 228.

³ In this case because this was originally a US government measure for European governments to comply with. See Javier Argomaniz "The Passenger Name Records agreement and the European Union internalisation of US Border Security norms," *Journal of European Integration*, 31(1) (2009), pp. 119-136.

⁴According to Kathleen S. Sweet (2009), *Aviation and Airport Security: Terrorism and Safety Concerns* (Boca Raton, New York and London: CRC Press), pp. 38-47

⁵ See Leena Malkki and Teemu Sinkkonen, "Political resilience to terrorism in Europe: Introduction to the special issue," in this volume.

⁶ As demonstrated by the severe disruption caused by the attacks to Glasgow International (2007), Moscow Domodedovo (2011) and LAX (2013) airports.

⁷Arjen Boin, Louise K. Comfort and Chris C. Demchak, "The rise of resilience," in Arjen Boin, Louise K. Comfort and Chris C. Demchak, eds., *Designing Resilience: Preparing for Extreme Events* (Pittsburgh: University of Pittsburgh Press, 2010), p. 3.

⁸Malkki and Sinkkonen, "Political resilience to terrorism in Europe".

⁹Philippe Bourbeau, "Resiliencism: premises and promises in securitisation research," *Resilience*, 1(1) (2013), p. 12.

¹⁰Sweet, *Aviation and Airport Security*, p. 38

¹¹ Javier Argomaniz, *The EU and Counter-Terrorism. Politics, Polity and Policies after 9/11* (Abingdon: Routledge, 2011).

¹²On the September 11 attacks, see the Thomas H. Kean and Lee H. Hamilton, *The 9/11 Commission Report*, Washington DC, 22 July 2004, especially pp. 1-14, available at <http://www.9-11commission.gov/report/911Report.pdf>.

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- ¹³See for example the cost estimates in Gail Makinen, "The Economic Effects of 9/11: A Retrospective Assessment," *Congressional Research Service CRS-5*, 27 September 2002, available at <http://www.fas.org/irp/crs/RL31617.pdf>.
- ¹⁴Joseph E. Stiglitz' estimate was US\$3 trillion. See in Linda J. Bilmes and Joseph E. Stiglitz, "The Iraq War Will Cost Us \$3 Trillion, and Much More," *The Washington Post*, 9 March 2008, available at <http://www.washingtonpost.com/wp-dyn/content/article/2008/03/07/AR2008030702846.html>.
- ¹⁵ Passenger-baggage reconciliation was introduced in the wake of the Lockerbie bombing of 1988. According to IATA, it "attempts to ensure that the only baggage loaded onto an aircraft is that belonging to passengers of that flight who have actually boarded the aircraft." See IATA, "Baggage Reconciliation," at <http://www.iata.org/policy/Documents/baggage-reconciliation.pdf>.
- ¹⁶CAPPS aims at identifying "passengers that may pose a higher risk to aviation security. These higher-risk passengers and their baggage are subject to additional and more thorough screening." See GAO, *Aviation Security: Computer-Assisted Passenger Prescreening System Faces Significant Implementation Challenges* (Washington DC: General Accounting Office, February 2004), available at <http://www.gao.gov/new.items/d04385.pdf>.
- ¹⁷ See <http://www.tsa.gov/about-tsa/what-tsa>.
- ¹⁸ The full text can be found at <http://www.tsa.gov/stakeholders/transportation-security-laws>
- ¹⁹See for example BBC News, "Anti-terrorist cockpit doors 'dangerous'", *BBC News UK*, 31 October 2001, at <http://news.bbc.co.uk/1/hi/uk/1629465.stm>.
- ²⁰On QUANTAS' reaction for example, see Robert Wainwright, "Cost row hits sky marshals," *The Age*, 24 December 2003, at <http://www.theage.com.au/articles/2003/12/23/1071941731626.html>.
- ²¹See for example the official website of the US Customs and Border Protection: "Welcome to the Electronic System for Travel Authorization" at <https://esta.cbp.dhs.gov/esta/>.
- ²² Another forum, the European Civil Aviation Conference (ECAC) also addresses civil aviation matters but is considerably less influential in shaping global rules.
- ²³ The entry into force of the Lisbon Treaty in 2009 did away with the "Three Pillars" division.
- ²⁴ Including the possibility for the Commission bringing a state before the European Court of Justice for failing to meet its obligations.
- ²⁵ CNN World, "Shoe bomber: Tale of another failed terrorist attack," 25 December 2009.
- ²⁶Interestingly, on 19 February 2014 the Department of Homeland Security issued an alert for US-bound flights revolving around another possible shoe-bombing attempt – although without providing any details: an ABC report quoted an official as saying that "something caused DHS concern, but it's a very low threshold to trigger a warning like this" (see Associated Press, "Department of Homeland Security alerts airlines to possible shoe bomb threat," 19 February 2014, at <http://www.abc15.com/news/national/departement-of-homeland-security-alerts-airlines-to-possible-shoe-bomb-threat>). Whatever its merits, the alert indicates that DHS still seems to consider shoe bombs as a valid threat.
- ²⁷ European Parliament and Council of the European Union, "Regulation 2320/2002 of 16 December 2002 establishing common rules in the field of civil aviation security," *Official Journal of the European Union*, L 355/1, 30 December 2002.
- ²⁸European Commission, "Communication on the Use of Security Scanners at EU airports," COM(2010) 311/4, 16 June 2010, p. 4.
- ²⁹EurActiv, "Aviation Security," 15 April 2013.
- ³⁰ Interview with Commission Officials, DG MOVE, February 2014.
- ³¹ European Commission, "The European Commission Proposes Strengthening the Common Air Security Rules," press release, 22 September 2005.
- ³² European Parliament and Council of the European Union, "Regulation 300/2008 of 11 March 2008 on Common Rules in the Field of Civil Aviation Security and Repealing Regulation (EC) No 2320/2002," *Official Journal of the European Union*, L 97, 9 April 2008.
- ³³ Nonetheless, it is up to national governments to decide whether to deploy in-flight security officers and if they should carry weapons. See EurActiv, "Parliament Approves Aviation Security Overhaul," 12 March 2008.
- ³⁴European Commission, "Regulation 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security," *Official Journal of the European Union* L 55/1, 5 March 2010. See also European Commission, "Regulation 272/2009 of 2 April 2009 supplementing the common basic standards on civil aviation security laid down in the Annex to Regulation (EC) No 300/2008 of the European Parliament and of the Council," *Official Journal of the European Union* 91/7, 2 April 2009.
- ³⁵New York Times, "Details Emerge in British Terror Case," 28 August 2006.

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- ³⁶On the 1995 Transpacific airliner bombing plot (also known as "Operation Bojinka") and parallels of the 2006 Transatlantic airliner bombing plot, see for example Raymond Bonner and Benjamin Weisser, "Echoes of Early Designs to use Chemicals to Blow Up Airliners," *New York Times*, 11 August 2006, at http://www.nytimes.com/2006/08/11/world/europe/11manila.html?_r=0.
- ³⁷Xiana Barros, "EU Counter-terrorism and Aviation Security: Supranational Rules But Intergovernmental Politics?" *European Foreign Affairs Review*, 17 (2013), pp.53–70.
- ³⁸European Commission, "Regulation 1546/2006 of 4 October 2006 amending Regulation (EC) No 622/2003 laying down measures for the implementation of the common basic standards on aviation security," *Official Journal of the European Union*, L 286/6, 17 October 2006.
- ³⁹See for example the pdf file provided by Glasgow International Airport, at <http://www.glasgowairport.com/media/64975/glasecurityliquids.pdf>
- ⁴⁰Barros, "EU Counter-terrorism and Aviation Security".
- ⁴¹EurActiv, "MEPs warn of 'toothpaste mountains' at EU airports," 14 February 2007.
- ⁴²EurActiv, "EU accused of hampering airport security," 4 May 2011.
- ⁴³See the Commission summary of the restrictions on liquids, aerosols and gels at http://ec.europa.eu/transport/modes/air/security/aviation-security-policy/lags_en.htm.
- ⁴⁴Interview with Commission Officials, DG MOVE, February 2014.
- ⁴⁵EurActiv, "MEPs warn of 'toothpaste mountains' at EU airports," 14 February 2007. Ironically, a few days before the opening ceremony of the Sochi 2014 Winter Olympic Games, the US Department of Homeland Security issued a warning with regard to explosive devices possibly hidden inside toothpaste. On this threat, see for example Tony Bonnici, "US warns of toothpaste tube explosive threat to the Olympics," *The Times*, 6 February 2014, at <http://www.thetimes.co.uk/tto/news/world/europe/article3997265.ece>
- ⁴⁶EurActiv, "Aviation Security," 15 April 2013.
- ⁴⁷"PETN – hard to detect and just 100g can destroy a car," *The Guardian*, 27 December 2006.
- ⁴⁸See the official complaint affidavit United States District Court for the Eastern District of Michigan, "United States of America vs Umar Farouk Abdulmutallab," December 25 2009, at <http://graphics8.nytimes.com/packages/pdf/national/20091226ComplaintAffidavit.pdf>.
- ⁴⁹European Commission, "Communication on the Use of Security Scanners at EU airports".
- ⁵⁰Kristin Archick, *US–EU Cooperation Against Terrorism* (Washington: Library of Congress, 2013), p.17.
- ⁵¹In the UK, such fears were justified not long after the introduction of these systems: in March 2010, the first two female Muslim passengers were denied boarding after they refused to go through the scanner as ordered on the grounds that the scanners would violate Islamic teaching on nudity. More advanced scanners however no longer render a detailed black-and-white picture of the naked body but use a matchstick man-like depiction, with potential threats flagged up in red. See "Airport worker given police warning for 'misusing' body scanner," *The Guardian*, 24 March 2010.
- ⁵²These are: Human dignity (Article 1), respect for private and family life (Article 7), protection of personal data (Article 8), freedom of thought, conscience and religion (Article 10), non-discrimination (Article 21), the rights of the child (Article 24) and human health protection (Article 35). See: European Commission, "Communication on the Use of Security Scanners at EU airports", p 4.
- ⁵³European Commission, "Regulation 185/2010 of 4 March 2010 laying down detailed measures for the implementation of the common basic standards on aviation security".
- ⁵⁴European Commission, "Communication on the Use of Security Scanners at EU airports", p 2.
- ⁵⁵Council of the European Union, "EU Action Plan on Combating Terrorism," 17594/1/11, 9 December 2011.
- ⁵⁶See "Qaeda Branch Aimed for Broad Damage at Low Cost," *The New York Times*, 20 November 2010.
- ⁵⁷Council of the European Union, "EU Action Plan on Combating Terrorism," 15893/1/10, 17 January 2011.
- ⁵⁸European Commission, "The EU action plan on air cargo security," MEMO /10/625, 29 November 2010.
- ⁵⁹Council of the European Union, "Progress report regarding strengthening air cargo security," 11250/11, 8 June 2011.
- ⁶⁰Council of the European Union, "Progress report regarding strengthening air cargo security," p. 10
- ⁶¹The 30 cargo inspections at Member State airports by the Commission had shown that "implementation of EU rules must be improved".
- ⁶²Council of the European Union, "EU Counter-Terrorism Strategy – Discussion Paper," 10622/11, 27 May 2011.
- ⁶³Interview with Commission Officials, DG MOVE, February 2014.
- ⁶⁴Council of the European Union, "Aviation Security against Terrorist Threats – Conclusion of the Conference of 31 October 2012, Nicosia, Cyprus," 16252/12, 16 November 2012, p. 11.
- ⁶⁵Council of the European Union, "Aviation Security against Terrorist Threats", p. 3.
- ⁶⁶Interview with Commission Officials, DG MOVE, February 2014.

⁶⁷Malcolm Anderson, "Counterterrorism as an Objective of European Police Cooperation," in Fernando Reinares, ed., *European Democracies Against Terrorism. Governmental policies and intergovernmental cooperation* (Aldershot: Ashgate, 2000), p. 228.

⁶⁸Palonen, "Four Times of Politics," p. 179.

⁶⁹Comitology refers to a system where committees consisting of representatives from Member States examine the Commission proposals before implementing measures area adopted. See the full definition of the term in the official EU website at http://europa.eu/legislation_summaries/glossary/comitology_en.htm.

⁷⁰Mainly the Directorates-General dealing with Home Affairs (DG Justice, Liberty and Security and its successor DG HOME) and, more often, the Directorate-General for Mobility and Transport (DGMOVE).

⁷¹Barros, "EU Counter-terrorism and Aviation Security", p. 66.

⁷²The Transport committee, on the other hand, has been generally more willing to compromise.

⁷³EurActiv, "Parliament wants liquid ban on planes eased," 6 September 2007.

⁷⁴Palonen, "Four Times of Politics," p 182.

⁷⁵Interview with Commission Officials, DG MOVE, February 2014.

⁷⁶In particular the Brighton hotel bombing in 1984, and the series of bombings in Paris between December 1985 and September 1986. Anderson, "Counterterrorism as an Objective of European Police Cooperation," p. 228.

⁷⁷Anderson, "Counterterrorism as an Objective of European Police Cooperation."

⁷⁸Confidential interviews with various British airport security officials, February 2014.

⁷⁹Confidential interview with a security official of a Scottish airport, February 2014.

⁸⁰Confidential interview with an official of a major airline, February 2014.

⁸¹Similarly, the EP also restricted the use of air marshals on flights, giving the departure, over-flight and arrival states the right to refuse officers carrying weapons. See: EurActiv, "Council agrees to armed air marshals," 13 October 2006.

⁸²Frank R. Baumgartner and Bryan D. Jones, *Agendas and Instability in American Politics* (Chicago: University of Chicago Press, 1993).