

Iztok Prezelj*

RELATIONSHIP BETWEEN SECURITY AND HUMAN RIGHTS IN COUNTER-TERRORISM: A CASE OF INTRODUCING BODY SCANNERS IN CIVIL AVIATION

ABSTRACT: Changes in security environment after the end of Cold War and 9/11 have strongly affected our security concepts and paradigms. In the field of counter-terrorism, a serious conceptual and practical debate on the relationship between security and human rights and freedoms has begun. The goal of this paper is to reflect on this complex relationship at the conceptual level and introduce the empirical debate on this relationship in the field of civil aviation (case of introducing body scanners). The paper's results show that the concept of human security usefully integrates the care for human rights and security of individuals. The debate on the potential introduction of body scanners on the European airports was actually a debate on the ways of providing individual human security on the airports with simultaneous concern for other human rights. The output of this debate was a compromise: body scanners can be used at the discretion of individual airports and member states, but are not an obligatory measure on all European airports.

KEY WORDS: counter-terrorism, human security, human rights, balance, terrorism, civil aviation, body scanners

Introduction

Terrorist threat has forced democratic states to act effectively to protect their population, institutions and infrastructure. It however turned out that they have occasionally violated human rights simply by wanting to achieve more security and protection. This is

* University of Ljubljana, Faculty of Social Sciences, Defence and Security Studies Center, Kardeljeva ploščad 5, 1000 Ljubljana, Slovenia, Iztok.prezelj@fdv.uni-lj.si

why a serious conceptual and practical debate on the relationship between security and human rights and freedoms has begun. The purpose of this paper is to reflect on this complex relationship at the conceptual level, introduce the empirical debate on this relationship in the field of civil aviation and extract some key lessons. The first part of this paper discusses the human security concept as a potential bridge for the security – human rights divide. The second part of this paper is an assessment of the conceptual relationship between security and human rights and the third part practically reflects on this relationship on the case of introducing body scanners in the field of civil aviation.

However, before we address the above mentioned issues, the roots of the human security concept need to be clarified. The concept of human security evolved as a result of the changes in security environment after the end of the Cold War. A combination of many factors led to its formation. A decreased threat of global nuclear war created a cognitive space for non-military threats to be perceived with greater intensity. At the same time, the process of democratization increased the attention to the individual human life and well-being. Consequently, the role of human rights and freedoms and their implementation at the national and international level became much more significant than before. On the other hand, an increasing number of internal violent conflicts erupted in Africa, Asia and Europe (Balkans), leading to huge humanitarian crises, increasing differences in economic development between North and South emerged, terrorism, crime, etc. In such circumstances, the classic concepts of national and international security simply did not reflect the needs. This is why a kind of intellectual “revolution” started, aiming to provide the most appropriate and fitting concept that would make interpretation and analysis of security easier. Neorealist focus on states and military security proved to be too narrow and unfitting. The narrow politico-military strategic studies evolved towards much broader security studies, encompassing also many non-military aspects of security (Ullman; Mathews; Buzan, Waever & de Wilde; Buzan; Buzan, Kelstrup, Lemaitre, Tromer and Waever). Human security was finally conceptualized and presented to the global public in the Human Development Report in 1994. The concept has evolved since then, and today we can observe several definitions and theoretical approaches (Vogrin, Prezelj & Bučar). It is this concept that allows us to study the relationship between the need and right to security in case of terrorism and other human rights.

The Concept of Human Security as a Bridge for Security – Human Rights Divide

The concept of human security focuses on the individual person as a key referent object. The Table 1 shows key differences between human and traditional concepts of security.

Table 1: Basic elements of human security (Bajpai 48).

	Traditional national security	Human security
Security for whom (referent object)	Primarily states	Primarily individuals
Values at stake (security of what values)	Territorial integrity and national independence	Personal safety and individual freedom
Security from what (threats and risks)	Traditional threats (military threats, violence by countries...)	Non-traditional and also traditional threats
Security by what means	Force as the primary instrument of security, to be used unilaterally for a state’s own safety	Force as a secondary instrument, to be used primarily for cosmopolitan ends and collectively; sanctions, human development, and humane governance as key instruments of individual-centered security.
	Balance of power is important; power is equated with military capabilities.	Balance of power is of limited utility; soft power is increasingly important.
	Cooperation between states is tenuous beyond alliance relations.	Cooperation between states, international organizations and NGOs can be effective and sustained.
	Norms and institutions are of limited value, particularly in the security/military sphere.	Norms and institutions matter; democratization and representativeness in institutions enhance their effectiveness.

Table 1 can give us an impression that human security is about to replace the traditional security concept. Yet, Axworthy noted that the concept of human security does not oust or replace the traditional security concept. Both concepts represent rather

different ideas how to respond to existing threats. The basis of the traditional security concept is sovereignty of a state, while the basis of the concept of human security is sovereignty of an individual (Axworthy). We can observe that the right of the state and the right of the individual somehow coexist in the security environment and influence each other. In this respect, both concepts also coexist. Important is that human security is not negating traditional security because it incorporates traditional threats and means. This means that human security is complementing the notion of national and international security by focusing it more on the human component. Today, it has become a fundamental element of the concepts and policies of national, regional and international (and even global) security.

A comparison of different conceptualizations of human security (Vogrin, Prezelj and Bučar) shows that their key referent object is individual, while some concepts also stress the centrality of human communities (e.g. ethnic groups, minorities etc.). The criteria for this selection is the vulnerability of individuals to traditional or non-traditional threats (terrorism in the case of this paper). Further comparison showed that the values most often stated as at stake in human security situations are survival, safety, livelihood, freedom, well-being and dignity. For example, Bajpai stressed that the fundamental values at stake in human security are physical safety and well-being and individual/personal freedom (Bajpai). Human security concepts also reflect a broad spectrum (or an endless spectrum in Oberleitner's terms 13) of mostly non-traditional, but also some traditional, threats to human security. The threat spectrum includes the following threats: economic threats, food threats, health threats, environmental threats, personal threats, community threats, political threats, demographic threats, crime in all forms, including terrorism, natural disasters, violent conflicts and wars, genocide, anti-personnel mines, SALW, etc. Further comparison of understanding of protection means shows that the state actually remains the most important protection subject for most of human security situations. Some human security approaches explicitly and some also implicitly stress the importance of non-governmental and international governmental actors, but the state retained its direct or indirect role. All this means that human security has become an inseparable part of national and international security policy performed by states, international organizations and non-governmental organizations.

The Complex Relationship between Security and Human Rights

The above debate on human security and its content actually opens the question of the relationship between freedom and security. There are two philosophical understandings of this relationship: competitive and mutually supporting. The currently prevailing competitive interpretation posits that these are competing systems, that there is some kind of zero-sum relationship between them and that one needs to choose between security or human rights (security versus human rights). This view is to a large extent stimulated by the intensive violations of human rights by states in the fight against terrorism. On the other hand, some scholars and politicians claimed that this relationship should be understood in a more complementary manner and that there is a mutually supporting relationship. This is not a new thesis, as Benjamin Franklin already took this perspective in 1795. It is surprisingly unknown to the broad public that the Universal Declaration on Human Rights and Freedoms (1948, art. 3) defined security as a human right. It states that everyone has the right to life, liberty and security of person. The former UN Secretary General, Kofi Annan, similarly stressed the positive correlation among human rights, security and development in his report *Larger Freedom: Towards Development, Security and Human Rights for All* (Annan). He created a triangle of interconnected elements – security, human rights and development. In his opinion, the notion of larger freedom (that was introduced in his report) encapsulates the idea that development, security and human rights go hand in hand and increasingly reinforce each other. This relationship has only been strengthened in our era of rapid technological advances, increasing economic interdependence, globalization and dramatic geopolitical change. Accordingly, we will not enjoy development without security, we will not enjoy security without development, and we will not enjoy either without respect for human rights. Unless all these causes are advanced, none will succeed.

Human security concept refers to providing security within the limitations of respect for human rights (Prezelj). Accordingly, the responsible actors (states, international community and NGOs) need to provide human security to the threatened individuals and communities, but this activity needs to be in balance with other human rights. Human right to security needs to be in balance with other human rights. This means that the endeavour for a maximum level

of security should be systemically reduced to the endeavour for a balanced level of security.

However, there are some legal limitations on human rights and freedoms due to predefined interests of national and public security. The National constitutions, the Universal Declaration on Human Rights of 1948, European Convention on Human Rights of 1950, Johannesburg Principles on National Security, Freedom of Expression and Access to Information of 1996 and the Guidelines on Human Rights and the Fight against Terrorism of 2002 are documents that approve certain exceptions and situations in which human rights can be legally violated, however they also draw a strict line that cannot be crossed by states in pursuit of security. Key reason for limitation of human rights (other than security) are interests of national and public security, state of war and crisis in which human rights are threatened. The state needs to demonstrate that such limitations are needed, they have to be commensurate with the threat and limited in time. This is the point at which many problems emerge, especially in the effective fight against the terrorism.

The fight against terrorism has become a priority for many European and non-European states and international organisations. The EU wants to create an area of freedom, security and justice and the EU Counter-terrorism Strategy of 2005 is based on the strategic commitment to combat terrorism globally while respecting human rights. But this is a difficult goal in practice, especially when it seems that states seek security against terrorism by excessively limiting other human rights. It is actually easy to identify many cases where human rights were violated by organisations or states wanting to provide a higher level of national security:²

- Heavily militarized counter-terrorism led to military operations against civilians not engaged in war activities (terrorism is predominantly a civilian threat).

- Security services abused vague and differentiated definitions of terrorism.

- Personal data exchange among countries was not always subjected to the high human rights standards, some states have been rendering their suspects to other states where human rights standards were not adequate.

² In our discussion of violations of human rights by counter-terrorism, it needs to be clear that the biggest violation of human rights is actually a terrorist attack. All terrorist attacks with human casualties represent a gross violation of the human right to life.

- Proactive stimulations for committing criminal and terrorist acts were identified.
- Profiling terrorists led sometimes to religious or ethnic discrimination.
- Pre-charge detention periods increased, in the most extreme case (Guantanamo) for an indefinite time period.
- Violence used by states in crisis management operations outside Europe and US has not been subjected to the same limitations as at home.
- The concept of enemy combatant has been misused.
- Guantanamo detention camp proved to be a place where torture was used to extract information from suspects.
- Some terrorist suspects were detained in Europe by the CIA at secret locations, where torture and other illegal practices were most likely used.
- Military commissions (courts) were used to trial civilian detainees, etc.

The Case of Introducing Body Scanners in the Field of Civil Aviation

This section aims to show a complex debate about the relationship between security and human rights in the field of civil aviation. This field has been subjected to serious terrorist threats in the past expressed by several cases of hijacking, bomb attacking, attacking by the use of MANPADS (Man Portable Air Defence Systems) and the unique case of 9/11. The intention to introduce body scanners in some airports to help protect civil aviation from the threat by terrorism has led to serious focused debates about the relationship between security and human rights. This section reflects the arguments for and against the use of body scanners on the European airports. The case study was made based on the collection and analysis of media records on body scanners published since 2008.

After each significant security breach in civil aviation, the security measures were strengthened and, sometimes, new security measures were introduced. Firstly, the passengers had to remove their jackets when passing through the airport security. After the Lockerbie case, there was more screening of hold baggage. After 9/11, the cockpit security improved, after the case of the shoe bomber, Richard Reid, the shoes needed to be removed

and then belts and liquids, etc. A debate on introducing body scanners started in 2009 after the unsuccessful terrorist attempt by Umar Farouk Abdulmutallab. This Nigerian man tried to blow up an airplane flying from Schiphol (Netherlands) on 25 December (Christmas day) as it prepared to land in Detroit (USA). He tried to use the “underpants bomb.” He apparently smuggled the bomb through the airport security in Amsterdam and Lagos where his journey began. He assembled it in the toilet on the aircraft and then tried to set the explosive device in his underwear. To prevent such cases, full body scanners have been introduced and tested in several EU and other airports worldwide (especially in the US). The tests took place before the attempt by Abdulmutallab and later. Body scanner manufacturers claimed they would detect materials of the sort Abdulmutallab allegedly took on to his Northwest Airlines flight, but some experts cautioned that it would depend on a series of factors, not least the vigilance of the scanner operator. Technically, the whole body imaging process allows airport security staff to see beneath the clothing of passengers to ensure travellers are not carrying on their bodies (that is under their clothes) concealed weapons of most types, metal or ceramic knives, explosives, drugs, etc. Within seconds, an X-ray scanner produces a virtual three- or two-dimensional black and white image of the body minus hair or facial features. Where the technology is available, air security officials can pick out individuals to stand in a screening booth while pictures are taken of the person in slightly different positions. Passengers can be selected for scanning randomly or after being pinpointed by other technical or visual means (airport intelligence).

After the case with “underpants bomber,” some European airports introduced these scanners. Immediately after that, a fierce public debate on security benefits and human right concerns started. This section presents some arguments for and against these scanners.

Arguments for Body Scanning. Probably the most common-sense argument for the use of this technology was given by the Italian foreign minister, who simply said that the technology is available and we have to use it. The main argument for the use of body scanners was that they increase security by being able to detect hidden objects not picked up by traditional metal detectors. One manufacturer said that this technology reveals anything concealed on the person: coins in a pocket, trouser studs, metal or ceramic knives, guns, explosives, drugs (Body scanners at Manchester Airport). In

this way, the scanners can complement in a very effective and efficient way the existing security measures at airports (Europe Delays Airport X-ray Eye, 2008). In addition, they would also have the potential to speed up the check-in process, as passengers would not need to be searched by security officials (Europe Eyes airport X-ray Vision; "Naked" Scanner in Airport Trial). Very informative is the case of Manchester airport. Sarah Barrett, head of customer experience at the airport, said most passengers did not like the traditional "pat down" search. At Manchester Airport's Terminal 2, where the machine has been introduced, passengers no longer have to remove their coats, shoes and belts as they go through security checks. She said: "This scanner completely takes away the hassle of needing to undress." She also said that a black-and-white image would only be seen by one officer in a remote location before it was deleted. "The images are not erotic or pornographic and they cannot be stored or captured in any way," she said. Passengers could refuse to be scanned. The radiation levels were "super safe." She also said that the passengers can go through this machine 5,000 times a year each without worrying, because the amount of radiation transmitted is tiny. By replacing the usual "pat down" searches, the airport claimed the technology has cut the average security check from two minutes to 25 seconds. And, unlike normal security checks, passengers are able to keep their jackets, shoes and belts on (Body scanners at Manchester Airport). This scanner completely takes away the hassle of needing to undress (Manchester airport trials naked-image security scans).

The supporters also stressed that there should be no health concern due to the body X-ray scanning. California scientists writing in Archives of Internal Medicine calculated that they contribute under 1% of radiation people are exposed to during a flight. Patrick Mehta and Dr. Rebecca Smith-Bindman, experts in public health and radiology at the University of California, said even the most frequent flyers who clock up 60 hours a week in the air will face only a tiny increase in cancer risk. For example, the scans might cause four extra cancers among a million of these frequent flyers, they say. In comparison, 600 cancers could occur from the radiation received during the flight itself and 400,000 cancers would be expected to occur throughout their lifetime anyway, regardless of their travel exposure. And the threat to children is also low, they say. A recent report from the British Institute of Radiology and the Royal College of Radiologists found the dose from an airport scan is 100,000 times lower than the average annual dose of radiation

we get from natural background radiation and medical sources. Dr. Peter Riley, consultant radiologist and lead author of the report, said the risk was tiny (*Are Airport Body Scanners a Radiation Risk*). The UK Department for Transport also stated that the level of radiation that one usually receive from such a machine is equivalent to what one would naturally receive (from the sun) from two minutes of flying at about 35.000ft. Professor Richard Wakefield, a radiation expert at Manchester University's Dalton Nuclear Institute said that the doses potentially received are "verging on the ridiculous to be worried about them" (Does safer flying mean a risk of radiation?).

In defence against criticism, the supporters frequently stated that the scanners show only an outline of the subject's body, without anatomical detail, and that the images will be deleted after the passenger will be processed.

Arguments against body scanning. Antagonists expressed mainly three kinds of related concerns: violation of privacy as a human right, violation of other human rights and threat to health of passengers. Also concerns about the data protection were raised. The privacy concern is based on the persuasion that body scanning is a "virtual strip search," an offence against human dignity because the machines see people completely naked, with visible breasts, genitals, big or small breasts, breast enlargements, body piercings, etc. This would make people also uncomfortable, embarrassed and even humiliated. Handicaps should be even more affected by exposing their false limbs, colostomy bags, breast implants. In short, the scanners would leave little to the imagination of airport security staff. There was also a concern that scans of celebrities or of people with unusual body profiles could prove as an irresistible pull for some employees, leading to their potential publication on the internet. To some observers it was likely that the bored security staff would be distracted by the sight of an attractive man or woman or a passing celebrity. Special criticism was related to the scanning the bodies of children. This threatens to breach child protection laws which ban the creation of indecent images of children. Any creation of indecent pictures of a child, showing genitalia, is a criminal act, according to the opponents. Also a call for rejection of these measures by the Muslim community was made. Muslim women care very much about hijab and keeping all their body's parts private and unseen. An assumption was made that such measures will prevent many British Muslim women from travelling by the airplanes. These concerns seem to be justified as already two potential abuses of existing body scanners appeared. In one

case, a journalist from a tabloid paper called the airport and asked for some photos of naked girls. In the second case, a security guard was exposed as having abused the technology. A Heathrow Airport security guard was given a police warning after he was allegedly caught staring at images of a female colleague in a body scanner. The antagonists also wanted to have more studies on risks and potential benefits on the table before potentially supporting the body scanners.

Our synthesis of the above debate on the relationship between security and human rights points to several key areas of conflict (see the Table 2).

Table 2: Key arguments for and against introducing body scanners on the European airports.

Security arguments for body scanners	Human rights concerns about body scanners
Improves security on airports	and simultaneously violates human rights
Complements the existing security measures	by violating human rights and creating additional concerns
Speeds up the check-in process	at the expense of other human rights
Manual searches and undressing not needed	But this is still a violation of privacy of passengers (images show too much)
Body scanning is voluntary	This is then a voluntary humiliation, embarrassment and offence against human dignity
Radiation levels are small (safe) for human health	Radiation levels are too high and threaten human health (violation of the right to health)
Details or specifics of the human body are not revealed	Some past cases show that the details were revealed and the right to privacy was violated
Images are deleted after inspection of the operator, the operator is located on a remote location	How can we trust that images will be deleted and not misused?

The evolution of the debate between pros and cons showed that the planners of the use of this technology, airport operators and producers actually tried to meet several concerns by the antagonists. They financed studies in this field, changed technology and related operational procedures. For example, the locations for image reading were separated from the machines, images deleted,

operators trained, etc. However, this was not enough in the eyes of human rights supporters and activists. Consequently, this debate prevented the European Union to introduce a general obligation of body scanning on the airports. The minimal common basic security standards and measures in the EU are determined by two unclassified regulations: Parliament and Council Regulation No. 300/2008 and Commission Regulation No. 185/2010. Detailed measures for the implementation of the common basic standards on aviation security are defined in later document and its amendments. These regulations and related standards do not mention the use of body scanners. This means that they can be used today to improve security on the airports exclusively at the decision of an individual airport and a member state of the EU.

Conclusion

This paper showed that balancing between human rights and security is one of the most important challenges of our societies. Human rights supporters need to understand the importance of security (i. e. the right to live in their terminology) and the security professionals need to understand the importance of human rights and freedoms. History has frequently led to major violations of human rights and related decrease of quality of life by the unrestrained search for 100% security. The past fight against terrorism also reflected some such attempts. Modern democratic states with their principle of division of power are, however, purposely made to retain the basic level of human rights in exchange for perfect (100%) security. This means that strong mutually exclusionist approaches (towards security and human rights) are not beneficial for the future of our societies.

This paper has also shown that the concept of human security usefully integrates the care for human rights of individuals and related security. This concept is complementing the notion of national and international security by focusing it more on the human component. The debate on the potential introduction of body scanners on the European airports was actually a debate on the ways of providing individual human security on the airports with simultaneous concern for other human rights. The output of this debate was a compromise between pros and cons: body scanners can be used at the discretion of individual airports and member states, but are not an obligatory measure to be adopted on all airports.

Our societies will increasingly face similar dilemmas in the field of counter-terrorism as in the case of body scanners. Technology will simultaneously bring new security opportunities and risks for human rights. As a part of preparing for such a future, the concept of human security should be introduced in the educational and training process in the field of security, counter-terrorism and also in the field of human rights. This way the proponents from both sides will have better chances to make compromises for the benefit of our future generations.

Works Cited

- Anan, K., *In Larger Freedom: Towards Development, Security and Human Rights for All*, Report of the Secretary-General, General Assembly, 21 March, A/59/2005, 2005.
- Are Airport Body Scanners a Radiation Risk*, BBC, Web. 1 July 2011 <<http://www.bbc.co.uk/news/health-13990434>>.
- Axworthy, L., *Human Security: Safety for People in a Changing World*, Department of Foreign Affairs and International Trade, Ottawa, Canada, 1999.
- Bajpai, K., *Human Security: Concept and Measurement*, Kroc Institute Occasional Paper (Number 19), University of Notre Dame, Notre Dame, Indiana, 2000.
- Body Scanners at Manchester Airport*, BBC, Web. 4 January 2010 <http://news.bbc.co.uk/local/manchester/hi/people_and_places/newsid_8440000/8440198.stm>
- Buzan, B. *People, States and Fear, An Agenda for International Security Studies in the Post-Cold War Era*, London: Harvester Wheatsheaf, 1991.
- Buzan, B., Kelstrup, M., Lemaitre, P., Tromer, E. and Waever, O. *The European Security Order Recast: Scenarios for the Post-Cold War Era*, London: Pinter Publishers, 1990.
- Buzan, B., Waever, O. and de Wilde, J., *Security: A New Framework for Analysis*, London: Lynne Rienner Publishers, 1998.
- Commission Regulation (EU) No 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), 5.3.(2010): 1-55.
- Does Safer Flying Mean a Risk of Radiation?*, *The Guardian*, Web. 4 February 2010 <<http://www.theguardian.com/uk/2010/feb/04/airport-security-scanners-radiation>>.
- Europe Delays Airport X-ray Eye*, BBC, Web. 23 October 2008 <<http://news.bbc.co.uk/2/hi/europe/7687126.stm>>.
- Europe Eyes Airport X-ray Vision*, BBC, Web. 21 October 2008 <<http://news.bbc.co.uk/2/hi/europe/7683096.stm>>.
- Guidelines on Human Rights and the Fight against Terrorism*, Council of Europe, Directorate General of Human Rights, 2002.
- Johannesburg Principles on National Security, Freedom of Expression and Access to Information*, London, 1996.

- Manchester Airport Trials Naked-Image Security Scans*, *The Guardian*, Web. 13 October 2009 <<http://www.theguardian.com/world/2009/oct/13/manchester-airport-naked-security-scan>>.
- Mathews T.J., *Redefining Security*, *Foreign Affairs* 68.2 (Spring, 1989): 162-177.
- "Naked" Scanner in Airport Trial, BBC, Web. 13 October 2009 <<http://news.bbc.co.uk/2/hi/8303983.stm>>.
- Oberleitner, G., *Human Security and Human Rights*, ETC Occasional Paper Number 8, ETC, Graz, 2002.
- Prezelj, I. *Challenges in Conceptualizing and Providing Human Security*. *HUMSEC Journal* 1.2 (2008): 6-26.
- Regulation (EC) No 300/2008 of the European Parliament and of the Council 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), 9.4.2008: 72-84.
- The European Convention on Human Rights, Council of Europe, Rome, 1950.
- The European Union Counter-Terrorism Strategy, Council of the EU, 30 November, Brussels, 2005.
- Ullman, R., *Redefining Security*, *International Security* 8.1 (1983): 129-153.
- Universal Declaration on Human Rights and Freedoms, General Assembly Resolution 217 A (III), New York, 1948.
- Vogrin, A., Prezelj, I. and Bučar, B., *Človekova varnost v mednarodnih odnosih*, Založba FDV, Ljubljana, 2008.