# The Nonmilitary Air Threat

## A Challenge for the International Community

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> *The only route that offers any hope of a better future for all humanity is that of cooperation and partnership.*
>
> —Kofi Annan, 24 September 2001

The airspace, through which runs a constant flow of aircraft, looks like a highway traveled by both passengers and freight. For example, almost 15,000 planes and more than 200,000 passengers fly every day over French territory. Having evolved into intertwined trade routes with an ever-growing number of users, the sky is one of globalization's major symbols. However, by opening itself to increasingly heavy international traffic, the airspace has also evolved into an infiltration path for threats of a new type and has thus become vulnerable. In this respect, 11 September 2001 (9/11) represents the dawn of a new age. From now on, the threat that uses the third dimension can serve a terrorist action. The international community has become aware that the air environment has become a space where the people's safety is at stake. French prime minister François Fillon stated that "the safety of our air space is not an ancillary concern; it is a crucial requirement."[1] Provisions for safety must include any type of threat—not just a military attack by another state. Consequently, the joint concept of general safety recommends that any surveillance and detection plan take into account threats not directly military.[2]

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Since the attacks on the World Trade Center, the nonmilitary air threat has become a top security issue because of its potential for destruction. In addition to the trauma it generated, the disaster caused by the hijacked airplanes of 9/11 had tragic economic consequences. Insurance companies, for example, faced an unprecedented situation in terms of compensation for damages from these attacks.[3]

Faced with this form of threat specifically linked to the third dimension, one may wonder which legal instruments the international community has at its disposal to counter it. A legal framework dedicated to the nonmilitary air threat may seem difficult to identify since that threat can take many different forms. Terrorism may represent its most violent expression, but it is not the only possible scenario. Therefore, a typology better delineates this threat, thereby allowing an understanding of the current legal system that deals with these issues.

## The Nonmilitary Air Threat: Definition and Typology

The fact that the nonmilitary air threat may relate to very different circumstances makes defining the concept rather tricky. Within a general definition, the variety of scenarios comprising the threat makes a classification effort essential.

### *Defining the Nonmilitary Air Threat*

Generally speaking, one can define the threat as an entity intent on and capable of exploiting a vulnerability. Thus, according to the *Glossaire inter-armées de terminologie opérationnelle* (Joint glossary of operational terminology), the threat resembles a "possible aggression directed at the interests of a State that materializes as an ability and a will to harm."[4] That will to harm can belong to a state, an organization, or individuals. The threat must in essence include a deliberate component rather than constitute a risk, the meaning of which is much broader and more diffuse. That term refers either to a danger likely to be damaging to people, property, or the nation's interests, or to the possible occurrence of a sudden event, disastrous and irreversible, originating in the unleashing of natural elements or a malfunctioning normal activity.[5] The *Livre blanc sur la défense et la sécurité nationale* (White paper on defense and national security) introduces a distinction

between intentional aggressions and unintentional risks. The former include "acts of terrorism, large-scale cyberattacks, the threat of strikes using new weapons, ballistic in particular, and the various types of possible bypassing of our defenses." Unintentional risks resemble high-lethality health emergencies and natural or technological disasters.[6] Thus we find again the idea according to which the threat implies hostile intent. Therefore, the nonmilitary air threat must include an intentional component, as confirmed by various air safety agreements. For example, the one signed by France and Switzerland defines the nonmilitary air threat as "the aircraft victim of a hostile takeover or a civilian aircraft used for hostile purposes."[7] The same if true of the agreement signed by France and Italy.[8] More generally, one may define the nonmilitary air threat as any unlawful act that uses a civilian aircraft in the third dimension for hostile purposes. One must note that the civilian aircraft can be remotely piloted (i.e., a drone), which must be used in situations that do not endanger other aircraft.[9]

The nonmilitary air threat threatens the safety of property and people using the third dimension, as does violating the airspace by failing to respect overflight regulations. If international conventions mention only air security, then community and national documents will introduce the concept of air safety.[10] The fact that armed forces use a different approach to security and safety leads us to consider distinctions between them. On the one hand, air security originates in all the steps taken to limit risks that use of an aircraft may entail. These norms deal with weather hazards such as lightning and icing as well as bird strikes. Moreover, air security includes technical problems such as maintenance and failures, together with malfunctions linked to human factors such as erroneous assessments, medical problems, and so forth. On the other hand, air safety encompasses all the steps taken to counteract unlawful acts and enforce sovereignty of the national airspace.[11] Based on this distinction, one may think that the nonmilitary air threat comes under air safety since it represents a violation of airspace, the regulations of which it defies. Let us specify that the unlawful act causing the violation must be intentional if we are referring to a threat.

### *Typology of Nonmilitary Air Threats*

The unlawful act that represents the nonmilitary air threat can take three different forms.

**Violation of overflight regulations**. Failure to follow flight rules set by the state over which the aircraft flies represents a violation that undermines air safety. Thus, flying over French territory is regulated by the *Code of Civil Aviation* as well as by the *Criminal Code*. Flying over certain so-called sensitive areas such as nuclear power plants may be prohibited. In that context, entry into the restricted area or violation of current overflight procedures set by the state constitutes an offense. Such a scenario occurred in September 2008, when a stray Cessna entered the Villacoublay approach area without authorization, forcing the prime minister's Falcon 900 to execute an avoidance maneuver. The pilot of the aircraft, which was flying too high in a controlled area without radio contact, admitted responsibility in court and incurred a penalty.[12] In this case, one should emphasize the lack of any intent to harm. The situation involved more of a risk than a threat. However, an intentional offense constitutes a full-fledged air threat—witness the case of entry into sanctuary airspace by an ultralight aircraft pulling a banner that displayed a protest message during a G8 summit meeting. Failure to follow a state's overflight rules equates to violating the very principle of its air sovereignty and thus represents a threat.

**Unlawful acts directed against civil aviation security and unlawful seizure of aircraft**. Does the nonmilitary air threat have something in common with piracy? The air counterpart of maritime piracy does not really exist, at least in the law. Oddly enough, one must look to the Montego Bay convention on the law of the sea for a definition. Indeed, the rules that currently apply to maritime piracy can be adapted to air piracy, yielding the following definition: any illegal act of violence or detention, or any act of depredation committed for private ends by the crew(s) of a private aircraft and directed against another aircraft or against persons or property on board such aircraft.[13] The offense of piracy becomes clear only if all conditions are met; yet, this determination does not apply in practice because of the difficulty of meeting those conditions. That is, acts of piracy must be committed over international space such as the high seas or in an area where the state has no jurisdiction. However, air piracy may start in a state's airspace—for instance, on a runway. Additionally, according to the Montego Bay convention, the perpetrators must be on board another ship or aircraft, but in the standard scenario of air piracy, the pirate is already on board as a passenger of the aircraft he or she intends to hijack. Clearly, this definition of air

piracy is not intended to apply to many situations because of its restrictive nature. Therefore, it serves as only a very limited palliative.

Since it could not use the term *piracy*, the International Civil Aviation Organization (ICAO) dealt with the problem created by this legal vacuum by suggesting the two following terms: unlawful acts directed against civil aviation security (sabotage, attacks on the ground, false bomb threats, etc.) and unlawful seizure of aircraft. Three international conventions that specifically address violations of air security—the Tokyo (1963), Hague (1970), and Montreal (1971) conventions—mention those offenses.[14]

Firstly, as regards unlawful acts committed against the safety of civil aviation, the Tokyo convention targets all offenses against criminal law committed on board an aircraft in flight as well as acts that may or do jeopardize safety, good order, and discipline on board. The Montreal convention concerns unlawful acts directed against international civil aviation security, aimed at the sabotage or destruction of an aircraft. Thus, it condemns the act of placing on board an airplane any device or substance likely to render it incapable of flight, or the act of going after air navigation facilities or services for the purpose of endangering the security of the aircraft and its passengers. Generally speaking, the convention deems a criminal offense any violent act likely to jeopardize the safety of the aircraft as well as complicity in the commission of such an act.

Secondly, both the Tokyo and Hague conventions condemn the unlawful seizure or hijacking of an aircraft, the former convention considering that unlawful seizure of aircraft occurs "when a person on board has unlawfully committed by force or threat thereof an act of interference, seizure, or other wrongful exercise of control of an aircraft in flight."[15] The Hague convention deems unlawful seizure of an aircraft any act committed by "any person who on board an aircraft in flight: unlawfully, by force or threat thereof, . . . seizes, or exercises control of, that aircraft, or attempts to perform any such act, or is an accomplice of a person who performs or attempts to perform any such act."[16] That convention is important inasmuch as it considers collusion just as significant as an attempt. The hijacking by the Popular Front for the Liberation of Palestine (PFLP) of several airliners on 6 September 1970 involved a hostage taking for political purposes. In order to obtain the release of political prisoners held in Israel, the PFLP members simultaneously hijacked four airplanes, some

of which ended up landing in the Jordanian desert on makeshift runways. They then blew up the airplanes after evacuating the hostages. Between 1968 and 1970, the PFLP directed the world's attention toward the Palestinian cause by claiming responsibility for no fewer than 110 aircraft hijackings and hostage takings, thus serving a terrorist action.[17]

The world has witnessed a trend toward stepped-up terrorist actions of that nature, which now unhesitatingly destroy airplanes with their passengers on board. The destruction of a Boeing 747 flying over Lockerbie, Scotland, on 21 December 1988 (270 killed) or of a UTA DC-10 over Niger on 19 September 1989 (171 killed) offers good examples of the radicalization of terrorism. This hardening of the modus operandi goes hand in hand with another major change: those acts are now committed not only by isolated groups but also by rogue states. Today the nature of the modus operandi is changing. It no longer seeks to exchange hostages but to strike brutally as a means of shaping public opinion worldwide.

**An aircraft as a weapon by purpose**. The radicalization of terrorism is reflected in the growing destructive potential of the terrorist threat. Terrorism has evolved into an increasingly deadly phenomenon. Access to modern means of transportation and the availability of powerful explosive substances have marked the change to massacres on an enormous scale. Thus with 9/11, terrorism took on a new dimension, greatly exceeding the 1,000-victim threshold: "We entered the age of what we will call world terrorism."[18] We also use the term *hyperterrorism* to describe an attack on this scale.[19] Halfway between terrorism and an act of war, it has such psychological, political, and economic consequences that it constitutes an attack on the state's vital interests. In its resolution of 28 September 2001, following the attacks of 9/11, the United Nations (UN) Security Council likened international terrorism to a threat to international peace and security. A terrorist aircraft thus represents a very specific threat within the typology developed in this article. The aircraft becomes a weapon by purpose, losing its capacity as a means of transportation. Faced with increasingly deadly terrorist acts, we must prepare for scenarios involving nuclear, radiological, biological, or chemical attack, which an enemy could carry out by air. Indeed, coalition operations in Afghanistan determined that prior to 2001, al-Qaeda had conducted fairly advanced biological and chemical research.

The typology of nonmilitary air threats thus encompasses a wide range of hypotheses. From a simple offense to a violation of overflight rules to the use of aircraft as a terrorist weapon, nonmilitary air threats can assume varied forms. Furthermore, because the threat can change, one should not consider this typology static.[20] Long before 9/11 brought to light the problems of air safety, international law included a number of measures intended to fight nonmilitary air threats.

## The Legal System against the Nonmilitary Air Threat

The legal system designed to fight the nonmilitary air threat rests first upon the actors in charge of air safety. At the international level, in this respect the UN plays a central role through the ICAO and its 190 member states. Since 1947 the ICAO has been involved in the development of a safer airspace by encouraging member states to pass legislation aimed at achieving that goal.[21] As a true world forum of civil aviation, the ICAO has formalized its aim through strategic objectives, among which air safety is a priority.[22] At the regional level, European air safety is organized under the aegis of the European Civil Aviation Conference (Conférence européenne de l'aviation civile), which seeks to harmonize policies and practices pertaining to civil aviation in order to promote a safer, more efficient, and lasting European air transportation system. Another European participant, EUROCONTROL, is tasked with harmonizing and integrating air navigation services in Europe for the purpose of eventually creating a unified European airspace. Furthermore, the European Commission plays a role through the European Aviation Safety Agency (Agence européenne de la sécurité aérienne).[23] That organization is involved in the gradual development of a common air safety policy, which is increasingly becoming a requirement for the European Union (EU).[24] At the national level, the state remains central to air security. In France the prime minister is in charge of air defense. In case of an air emergency, that individual has full operational control of actions taken by the government in close contact with the High Air Defense Authority (Haute autorité de défense aérienne) and the affected departments: the Defense and National Security Secretariat (Secrétariat général de la défense et de la sécurité nationale) and the Interdepartmental Air Safety Commission (Commission interministérielle de la sûreté aérienne). Air safety is thus an interdepartmental issue. Depending

on the threat level, these various organizations make possible an assessment of the appropriateness of triggering prevention or intervention schemes such as Vigipirate (for its air component), Piratair, and Intrusair.[25] These different levels of participants are essential to fighting nonmilitary air threats, but such a setup would not be complete without a judicial arsenal.

### *The Importance of International Cooperation in the Fight against the Nonmilitary Air Threat*

International law includes a number of norms that define a framework for the fight against the nonmilitary air threat. One will find in those provisions less a "catalog" of repressive measures than an incentive to manage the threat collectively. Above all else, air safety rests on a policy of international cooperation aimed at setting a general framework through measures common to all affected countries. This is the only coherent response to such an insidious cross-border threat. Air safety agreements fully lie within this logic of cooperation and thus complement the international legal system.

**International legal instruments**. International law has gradually taken into account problems associated with the nonmilitary air threat. In 1944 the Convention on International Civil Aviation (Chicago convention) set out the principle of a state's sovereignty over its own airspace.[26] That founding charter of international civil aviation condemns any use of an aircraft that conflicts with the ultimate purpose of civil aviation. Upon closer review, one sees that it also includes a provision likely to apply to a nonmilitary air threat. The decree of 10 October 1975 tasks the air force, as a main link in the air safety chain, with "enforcing the integrity and sovereignty of the national air space and of its approaches."[27] As such, in case of intercepting a suspect aircraft, the air force must respect the interception conditions set forth by Article 3a of the Chicago convention, which prohibits the use of armed force against a civil aircraft. Resolution 1067 of the UN Security Council, which condemns the use of weapons against civil aircraft, confirms this prohibition.[28] Nevertheless, if the offending aircraft clearly displays aggressive behavior and constitutes a threat to the state over which it flies, the immunity provided for by Article 3a disappears, and Article 51 of the UN Charter becomes applicable, asserting the right of self-defense. One can then use armed force and even shoot down the aircraft.

More than anything else, the Tokyo, Hague, and Montreal conventions constitute the international legal foundation of the fight against the nonmilitary air threat. They thus define states' penal jurisdiction to take legal action against perpetrators. In addition to the conditions for suppression, the international conventions seek to ensure better care of passengers, crew, and cargo subjected to an unlawful act.[29] This international legal framework is effective only if backed up by the laws of each state and depends closely on the specific willingness of a state by virtue of its sovereignty, on the financial resources that it intends to devote to that policy, and on the obligations that it expects to impose on airlines.

Besides those documents relating to air safety, the provisions dealing specifically with terrorism can complete the legal system used to fight the nonmilitary air threat. On this subject, the UN has undertaken an important standardization work, first embodied in the conclusion of international conventions against terrorism.[30] Unfortunately, those conventions are only partially implemented in the absence of signature or ratification. The UN also acts against terrorism through resolutions.[31] In several of them, the UN Security Council calls international terrorism a "threat to international peace and security," thus authorizing an action based on chapter 7 of the Charter.[32] In addition, a Committee to Combat Terrorism was created to examine the soundness of the legal regimes against terrorism established by the member states and to help them with the implementation of their obligations. In its Resolution 635 of 14 June 1989, the UN Security Council condemned all unlawful activities directed against the safety of civil aviation and asked states to cooperate in developing measures aimed at preventing all terrorist acts. The EU also undertook a number of actions related to air safety. The attacks that took place in 2001 drove the international community to adopt a clearer legal framework. Indeed, in 2002 the European Parliament and Council adopted Regulation no. 2320/2002, which establishes common rules in the field of civil aviation to prevent unlawful acts that would likely endanger air safety.[33] All of these actions tended toward putting safety measures in place, and the attacks that took place in Madrid on 11 March 2004 greatly accelerated this cooperative process when the EU in June of that year set up a global action plan to combat terrorism with seven strategic objectives. Finally, one should also note that

Europe was among the first to set up a convention on the suppression of terrorism, doing so on 27 January 1977.

**Air safety agreements**. In 2001 the transposition of suicide aircraft's routes on a European scale clearly demonstrated the need to control the airspace over an extended area because aggression moves quickly from one territory to another. Cross-border by nature, nonmilitary air threats forced states to adopt a policy of cooperation on an international scale. According to the *Livre blanc du Gouvernement sur la sécurité intérieure face au terrorisme* (Government white paper on internal security in the face of terrorism), only though international cooperation can countries effectively fight international terrorism.[34] Because global terrorism has no borders, the fight against that phenomenon must be organized on the same model. If homeland protection falls within the states' jurisdiction, then the increase in financial, economic, and human exchanges makes international cooperation absolutely essential. It must ensure not only a more successful interception and neutralization of the threat but also (and above all) its anticipation through shared intelligence. Accordingly, states have successfully concluded cross-border bilateral agreements to fight the nonmilitary air threat.[35] Those agreements are similar to a transfer of command and control, both operational and tactical, of a military aircraft and thus consist of a partial delegation of the right to exercise sovereignty. They may include surveillance of the mutual interest zone's air approaches, threat assessment, and transmission to political authorities of pieces of information that a decision requires. Certain agreements, following the example of the Franco-Swiss agreement ratified on 26 November 2004, authorize direct implementation of air safety measures as necessary. Those measures range from the simple recognition of a suspicious civil aircraft to the right of cross-border hot pursuit with warning shots followed by boarding. Several agreements with Spain, Switzerland, Belgium, the United Kingdom, Italy, Germany, and so forth, were ratified.

Taking the reality of air threats into account imposes a broader international approach beyond cooperation between bordering countries. Considering the speed of aircraft, anticipation and prevention are essential to ward off a stealthy threat. Such a threat against French territory can originate in a distant country following a failure of the screening system (a luggage or passenger check) or faulty communication between countries

(a suspicious yet unreported route). This policy of cross-border cooperation must therefore extend to more distant countries such as the Mediterranean nations. With that objective in mind, a partnership known as the "5+5 Defense Initiative" began in 2004, bringing together 10 countries of the Mediterranean basin and making possible meetings of military authorities as well as exchanges of information through a specific network or air safety exercises.[36] The last session, held in Portugal in November 2009, simulated an air threat intercepted by a Mediterranean country and the transfer of responsibility to the bordering country.

### *Relevance of the Judicial Arsenal*

Although international conventions have the virtue of describing the various offenses likely to compromise air safety, they do not really offer preventive measures, remaining rather general on the subject. That is, the Hague convention makes clear that "for the purpose of deterring such acts [unlawful acts of seizure or exercise of control of aircraft], there is an urgent need to provide appropriate measures."[37] Similarly, the Montreal convention invites states to take "reasonable measures" to prevent unlawful acts committed on board aircraft.[38]

Without a doubt, the Tokyo, Hague, and Montreal conventions represent a major improvement, but they remain too consensual and therefore limited in scope. Without repressive measures against states that fail to enforce them, they remain rather symbolic. The main weakness of the legal system used to fight the nonmilitary air threat comes from the lack of jurisdictional competence of the state where the aircraft lands (whose criminal law most of the time does not apply to an offense committed in foreign countries) or even from the latter's refusal to accept jurisdiction. The state's competence to institute proceedings is subjected to so many precautions that they become difficult to implement. The Tokyo convention establishes two categories of competences: those of the contracting states and those of the aircraft captains. Similarly, according to Article 4, paragraph 2, of the Hague convention, any contracting state shall "take such measures as may be necessary to establish its jurisdiction over the offense in the case where the alleged offender is present in its territory." Thus it must submit the case to its authorities in charge of criminal prosecutions.[39] Should the state reject its jurisdiction, then it must extradite the offender. In such an event,

the Hague convention lists multiple cases of jurisdictional competences in order to provide, as much as possible, repressive actions with a legal framework: the state where the aircraft involved is registered and/or operated, where it landed at the time of the offense, or where it was welcomed in case of escape. However, the effectiveness of this criminal framework depends upon the extradition measures in force, usually bilateral. *Ipso jure* extradition can be invoked only if an extradition treaty exists between the states involved. In that case, the unlawful hijacking of an aircraft is to be systematically understood as an extradition case provided for by the treaty.

The extradition clause, as provided for by the Hague and Montreal conventions, tends to promote a collective suppression management, but the lack of compulsory measures unquestionably limits their scope. Consequently, it is impossible to give a predefined collective response to the nonmilitary air threat. Effectiveness would demand establishment of an extradition obligation to make prosecution more effective. To date, unfortunately, the states parties to the various international conventions dealing with air safety have chosen intentionally not to make them extradition treaties.

The repressive component is hardly more compulsory. The Tokyo convention provides for no repressive measures. The Hague convention calls the unlawful seizure of aircraft a criminal offense; however, it only invites states to make such an offense punishable by severe penalties or to take all appropriate measures.[40] Similarly, the Montreal convention suggests punishment by severe penalties.[41] In effect, this lack of precision translates into an inconsistency and incoherence of the states' criminal law responses. Furthermore, no provision was made for sanctions against contracting states that would not crack down on the unlawful seizure of aircraft.[42] To this lack of precision in terms of sanctions, one may add a difficult applicability of the conventions that further weakens the repressive system. Specifically, the conditions listed by the Hague convention may leave certain situations outside its scope; thus, a hijacking carried out by a person on the ground is not considered an unlawful seizure of aircraft. Similarly, within the scope of the unlawful seizure of aircraft, an accomplice is punishable only if he too is on board the aircraft in flight. Another restriction limits even more the applicability of the Hague convention. It applies only if the unlawful seizure occurred during a flight between two points located in two separate states.

The foundation of international relations resides in state sovereignty, which numerous states refuse to relinquish.[43] Consequently, sovereignty constitutes a sizeable obstacle to the implementation of a common policy of preventing and suppressing nonmilitary air threats. Prosecution and sentencing of the perpetrator excessively depend upon states' willingness to do so. According to the principle of subsidiarity, each state would be responsible for taking any additional measures needed by the international legal foundation to become fully operational. However, one notices that the legal system deployed to counter terrorism and unlawful acts committed against civil aviation is porous. Relying on their political will, it can only encourage the states that signed the international conventions to contribute to a better suppression of those acts. An international consensus remains unlikely in the light of the disparities that exist in the exercise of sovereignty by the various member states. Similarly, the EU must favor a community response—one hindered by the many legal disparities that exist within the union (e.g., civil aircraft appropriated by terrorists are not treated the same way from one country to another). Unlike France, Germany refuses to fire at a civil airplane hijacked for terrorist purposes. The Karlsruhe Constitutional Court's decision of 15 February 2006 prohibits the engagement of the armed forces in internal security missions and reinforces the notion of respect for human dignity. Thus, the lack of collective response remains the main factor limiting the effectiveness of repressive measures that address the nonmilitary air threat. The UN could play a role in this matter, giving the international conventions on air safety a more compulsory scope. It did just that following acts of sabotage in 1988 and 1989, when the Security Council considered in its Resolution 748 of 31 March 1992 that Libya's actions to obstruct the investigation of those acts represented a threat to international peace and security.

## Conclusion

The effectiveness of the system used to fight the nonmilitary air threat depends upon a declared political will; unfortunately, the reluctance of states to more strongly commit themselves forced the Tokyo, Hague, and Montreal conventions to remain relatively vague regarding the implementation of repressive measures and the terms of international cooperation.

The lack of harmonization and international will prevents a credible political and legal response to ever-growing threats. However, internationalized suppression is essential to deal with the nonmilitary air threat, which is cross-border by nature. Some military responses exist through the implementation of bilateral cross-border agreements, particularly with regard to active measures taken beyond territorial boundaries. Nevertheless, international cooperation must make a significant push in the field of suppression under criminal law.

**Notes**

1. Prime Minister François Fillon (address, Centre National des Opérations Aériennes, Lyon Mont Verdun, 27 February 2008).

2. *La sauvegarde générale* [The general homeland and population security], CIA-0.7, no. 163/DEF /CICDE/NP, 11 May 2007.

3. On this subject, see Loïc Grard, *Le droit de l'aviation civile après le 11 septembre 2001: Quelles mesures face à l' "hyper terrorisme"?,* Etudes à la mémoire de Christian Lapoyade-Deschamps [Civil aviation law after 11 September 2001: Which steps to take when faced with "hyper-terrorism"?, Studies dedicated to the memory of Christian Lapoyade-Deschamps] (Pessac: Centre d'études et de recherches en droit des affaires et des contrats, Presses Universitaires de Bordeaux, 2003), 590–600.

4. *Glossaire interarmées de terminologie opérationnelle* [Joint glossary of operational terminology], PIA no. 0.5.5.2, no. 414/DEF/EMA/EMP.1/NP, 8 March 2007.

5. Ibid.

6. *Livre blanc sur la défense et la sécurité nationale* [White paper on defense and national security] (Paris: Odile Jacob/La Documentation Française, 2008), 1: 70.

7. Decree no. 2005-1104 of 5 September 2005, ordering publication of the Franco-Swiss cooperation agreement on air safety against nonmilitary air threats, signed in Bern on 26 November 2004.

8. Decree no. 2007-1536 of 26 October 2007 ordering publication of the Franco-Italian cooperation agreement on air safety against nonmilitary air threats, signed in Paris on 4 October 2005.

9. "No aircraft capable of being flown without a pilot shall be flown without a pilot over the territory of a contracting State without special authorization by that State and in accordance with the terms of such authorization. Each contracting State undertakes to insure that the flight of such aircraft without a pilot in regions open to civil aircraft shall be so controlled as to obviate danger to civil aircraft." *Convention on International Civil Aviation, Signed at Chicago, on 7 December 1944 (Chicago Convention)* [hereafter referred to as Chicago Convention], Article 8, http://www.mcgill.ca/files/iasl/chicago1944a.pdf.

10. For example, the Fédération nationale de l'aviation marchande (FNAM) [National Federation of Commercial Air Transportation] distinguishes clearly between air safety (i.e., "the fight against malicious acts committed against aircraft or passengers") and air security, "which relates to the rules of aircraft manufacturing and operation." See the FNAM website at http://www.fnam.fr.

11. Air safety is similar to "the combination of measures as well as of human and material resources aimed at protecting civil aviation against unlawful interference." Article 2.3, Regulation (CE) no. 2320/2002, enacted by the European Parliament and Council on 16 December 2002, relating to the establishment of common rules regarding civil aviation.

12. The pilot of the Cessna was prosecuted on the following count: "Exposure of others to a direct risk of death or injury" and "flying over a restricted area, Class A controlled air space." The court suspended his pilot's

license for 18 months and fined him 1,000 euros. Thierry Vigoureux, "France: l'avion du Premier ministre évite une collision" [France: The prime minister's airplane avoids a collision], *Le Figaro.fr*, 29 September 2008.

13. *United Nations Convention on the Law of the Sea, Signed in Montego Bay on 10 December 1982*, Article 101, http://jurisplaisance.free.fr/normes_internationales/Montego_Bay/Convention_Montego_Bay_droit_de_la_mer.pdf.

14. *Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention)*, [14 September 1963] [hereafter referred to as Tokyo Convention], http://cns.miis.edu/inventory/pdfs/airterr.pdf; *Convention for the Suppression of Unlawful Seizure of Aircraft, Signed at the Hague, on 16 December 1970 (The Hague Convention)* [hereafter referred to as Hague Convention], http://www.oas.org/juridico/MLA/en/Treaties/en_Conve_Suppre_Unlaw_Seiz_Aircr_Sig_The_Hague_1970.pdf; and *Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation . . . Concluded at Montreal on 23 September 1971* [hereafter referred to as Montreal Convention], http://treaties.un.org/untc//Pages//doc/Publication/UNTS/Volume%20974/volume-974-I-14118-English.pdf.

15. Tokyo Convention, Article 11.

16. Hague Convention, Article 1.

17. As defined by the United Nations General Assembly Resolution of 9 December 1994, terrorism means "criminal acts intended or calculated to provoke a state of terror in the general public, a group of persons or particular persons for political purposes." Measures to Eliminate International Terrorism, A/RES/49/60, 9 December 1994, http://www.un.org/documents/ga/res/49/a49r060.htm.

18. *La France face au terrorisme, Livre blanc du gouvernement sur la sécurité intérieure face au terrorisme* [France against terrorism: Government white paper on internal security in the face of terrorism] (Paris: La documentation française, 2006), 10.

19. François Heisbourg, *Hyperterrorisme: La nouvelle guerre* [Hyperterrorism: The new war) (Paris: Odile Jacob, 2003).

20. On the subject of the evolving nonmilitary air threat, see Michel Dupont-Elleray, "Géopolitique du terrorisme aérien: De l'évolution de la menace à la diversité de la riposte" [The geopolitics of air terrorism: From the evolving threat to the diversified counterattack], Institut de Stratégie et des Conflits—Commission Française d'Histoire Militaire, http://www.stratisc.org.

21. Among other things, the ICAO added Appendix no. 17 to the Chicago Convention on 22 March 1974. That document defines international standards and recommended practices for air safety.

22. Strategic objectives for 2005–10, approved by the ICAO Council on 17 December 2004.

23. Regulation (CE) no. 1592/2002 of 15 July 2002.

24. The report of 24 April 2006 by the European Parliament Standing Committee brings up "the need to strengthen air safety in Europe," particularly through the requirement for unified European regulations.

25. Vigipirate is a security monitoring scheme; Piratair is implemented when an aircraft is hijacked; and hostile intrusion of French airspace triggers Intrusair.

26. The Chicago Convention was signed in 1944 by 52 countries and established the ICAO in 1947. Today that organization has 190 member states. It set the main rules of civil aviation (aircraft registration, security, rights, and obligations of member countries as regards air law).

27. Decree no. 75-930 of 10 October 1975, relating to air defense, modified by Decree no. 77-882 of 26 July 1977 and Decree no. 89-141 of 1 March 1989.

28. Security Council, Resolution S/RES/1067, 26 July 1996, http://www.undemocracy.com/S-RES-1067(1996).pdf.

29. Article 14 of the Tokyo Convention provides that neither the disembarking, handing over, detention in a foreign country of a passenger disembarked under orders of the captain, nor his return is considered as admission to a contracting state's territory for the purposes of the application of that state's laws.

30. Those that can more specifically apply to the nonmilitary air threat include the following: Protocol for the Suppression of Unlawful Acts of Violence at Airports Serving International Civil Aviation (1988); International Convention against Hostage Taking (1979); International Convention for the Suppression of Terrorist Bombings (1997); and International Convention for the Suppression of Nuclear Terrorist Acts (2005).

31. UN General Assembly, Measures to Eliminate International Terrorism, A/RES/49/60, 9 December 1994; and UN General Assembly, Measures to Eliminate International Terrorism, A/RES/51/210, 17 December 1996.

32. UN Security Council, Threats to International Peace and Security Caused by Terrorist Acts, S/RES/1368, 12 September 2001; and UN Security Council, Threats to International Peace and Security Caused by Terrorist Acts, S/RES/1373, 28 September 2001.

33. "The main objective of this Regulation is to establish and implement appropriate community measures, in order to prevent acts of unlawful interference against civil aviation." Article 1.

34. *La France face au terrorisme*. (See note 18.)

35. Loïc Simonet, "La pratique des accords de sûreté aérienne dans l'après 11 septembre" [Air safety agreement practices after 11 September], *Juris Info Défense*, March/April 2006.

36. The partnership includes five Arab Maghreb Union countries (Algeria, Libya, Morocco, Mauritania, and Tunisia) and five EU countries (Spain, France, Italy, Malta, and Portugal). Exercises included Air 07 and Renegade 2009.

37. Hague Convention, preamble.

38. Montreal Convention, Article 10.

39. Hague Convention, Article 7.

40. Ibid., Article 2, Article 9.

41. Montreal Convention, Article 3.

42. A few attempts were made in that direction. See René Mankiewicz, "La problématique de la 'piraterie aérienne'" [The "air piracy" problems), *Etudes internationales* 8, no. 1 (1977): 100–112.

43. The state's sovereignty over its territorial, maritime, and air space is supported by several provisions: Article 2 of the United Nations Charter; Article 2 of the Montego Bay Convention on the Law of the Sea; Article 1 of the Chicago Convention; and International Court of Justice decision of 27 June 1986, United States v. Nicaragua.