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# THE EUROPEAN UNION PASSENGER NAME RECORD SYSTEM AS AN EXCEPTIONAL MEASURE

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*'By saying the words, something is done'  
A Critical Analysis of The Speech Act Approach*



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# Abstract

Securitization theory of the Copenhagen School predicts that controversial measures such as EU PNR Directive get accepted through a series of securitization moves. Up until the Charlie Hebdo attack, the proposals of the so-called 'European Union Passenger Name Record system' were either declined or resulted in a gridlock. The main argument of securitization theory is that in the international system an issue is accepted as a security issue because an actor presents it as an existential threat to the survival of the referent object. And to survive, one needs exceptional measures to handle the security issue. The process of securitization is called a speech act and only successful if the audience accepts it as such. This article aims to show that speech acts did not lead to the acceptance of the EU PNR by the European Parliament. The EU PNR parliamentary debates serve as the empirical evidence. Critical discourse analysis examines how the EU PNR transformed from being controversial to uncontroversial. However, this was not caused by speech acts but rather the push and pull processes underlying securitization. The speech act approach reveals the weakness of the securitization theory. The results of the analysis show that the definition of a speech act is too narrowed, neglecting the role of other actors that are not securitizing and the concept of the audience is underdeveloped in the framework.

# Introduction

The Charlie Hebdo attack on January 7th, 2015, the coordinated terrorist attacks during a concert in the Bataclan theatre and cafes a couple of months later, and the March 2016 Brussels bombings stirred up heated debates about the security and privacy of EU (European Union) citizens. After the Charlie Hebdo attack, the European Council launched a statement condemning and grieving these attacks. In this document, a call for counterterrorism measures was made concerning the security of the EU. The Council urges an immediate adoption of the proposal on European Passenger Name Records (European Council 2015: 2).

Up until that moment, the proposals of the so-called 'European Union Passenger Name Record system' were either declined or resulted in a gridlock. EU officials claimed, on several occasions, that to prevent attacks like in Paris and Brussels a large database monitoring the air traffic within the Union is necessary.<sup>1</sup> After the Brussels attack in March 2016, EU Parliamentarians eventually adopted the EU PNR Directive with not much controversy.

Within the field of security studies, securitization theory of the Copenhagen School predicts that controversial measures such as EU PNR Directive get accepted through a series of securitization moves. The main argument of this theory is that in the international system an issue is accepted as a security issue because an actor presents it as an existential threat to the survival of the referent object and to ensure the survival of the referent object; one needs exceptional measures to handle the security issue (Buzan *et al.* 1998: 30-31). This process of securitization is called the speech act and only successful if the audience accepts it. (Buzan *et al.* 1998: 31). The aim of this dissertation is to investigate whether the once controversial EU PNR Directive got accepted through speech acts in the parliamentary debates on this issue.

## *The research question and hypothesis*

The research question of this dissertation is as following: How has the European Parliament accepted the once controversial EU PNR Directive? I argue that the European Parliament has been convinced to accept the EU PNR as an exceptional measure through a process of securitization. From this main argument, the following hypothesis is developed: (i) the European Parliament, as the *targeted* audience, accepted EU PNR Directive through successful speech acts. If the hypothesis is not confirmed, a revision of the Speech Act Theory within the CS framework is needed.

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<sup>1</sup> Nicolaj Nielsen, 'MPs clash with EU officials over foreign fighters', <https://euobserver.com/justice/126396>, 5 November 2014.

### *Object of study*

The EU PNR is a product of post 9/11 counter-terrorism policies between the USA and EU. The Passenger Name Records is an information data system that collects records of passengers such as: name, address, personal information, records of credit cards. The 'controversy' is that the collection of these personal data, as formulated in the proposals, violate fundamental privacy rights. The idea for a EU Passenger Name Record system was aimed at establishing a new database that tracks movement and collects data of all EU citizens and residents that travel by air (Bigo *et al.* 2015: 1, 6-7). The EU PNR serves as an applicable object to study how controversial issues do not need to be debated anymore (through speech acts).

### *Methods of data generation and analysis*

Data will be generated through the method of Critical Discourse Analysis of the European Parliament debates on PNR. According to Van Dijk (2001: 352) there is no such thing as value-free science and that discourse is a bundle of ideas, concepts and categories gives meaning to the language and context of a phenomenon (Hajer 2006: 67). To find discourse in the debates, this will be the most suitable method.

### *Sources*

For this research, I will analyze the EP PNR debates of 2003, 2006/2007, 2010 and 2015/2016. The main reason is to capture the discourse in the parliamentary debates. This way the transition towards accepting PNR will be clear. Another reason for choosing these debates is that these documents capture the three main PNR proposals of 2007, 2011 and 2016.

### *Scope and limits*

The access to EU documents could get problematic since the EU website is in a way transparent, but not always convenient enough to search through. Since I will be using a qualitative method, the results of the study are not to be generalized to a different, larger population and only apply to the case of EU PNR.

The first chapter outlines the main theories within security studies to show that these theories have not paid attention to the acceptance of audience and how the EU PNR got justified. This will lead to the mechanisms under which the speech act theory (i.e. process of securitization) works. In the third chapter, a critical discourse analysis is performed on parliamentary debates to see how EU PNR got accepted through speech acts. The results of this analysis will be discussed in the fifth chapter. The conclusion will evaluate the results found in the debates and discuss the importance of the speech act approach of the Copenhagen School.

# Literature review

## *Traditional vs New Approach in Security Studies*

For traditionalists in the field of security studies (Walt 1991; Lebow 1988; Gray 1992; Chipman 1992), the primacy of military issues and the state explain the conceptualization of security. Approaching the field of security studies with a traditionalist lens, one identifies security issues merely within the military sector and with the use of force (Buzan *et al.* 1998: 1). The strongest defense on the traditionalist position is given by Stephan Walt. According to Walt (1991), who has been one of the most notable scholars in the realist school of international relation, the study of security is about war and threats, use and control of military force (Buzan *et al.* 1998: 3).

In other words, insecurity is only caused by threatening military issues – these issues call for the usage of force and therefore states are enduringly suspicious of each other. Walt argues that excessively broadening the security agenda outside of the military field “would destroy its intellectual coherence and make it more difficult to devise solutions to any of these important problems.” (Walt 1991: 212 - 213). Simply put, traditionalists answer the question of why security issues become accepted by stating that, foremost, the domain of (in)security is defined by military issues and labeling something as a security issue will only exist by using force to tackle insecurity.

The frontiers of widening the issues of the security agenda (Buzan *et al.* 1998; Jahn, Lemaitre and Wæver 1987; Nye and Lynn-Jones 1988; Ullman 1983; Wæver *et al.* 1993; Wæver 1995; Tickner 1992) have challenged the military focus on security issues. These scholars argue that the concept of security has spread from the military onto the societal, political, economic and environmental sectors and that there can be other referent objects besides the state. As implied earlier, the disagreement within the group of “wideners” on security issues is the result of different theoretical directions. These dominant theories in the field of security will be discussed in the next part.

## *The Aberystwyth School*

The Aberystwyth School of critical security studies has its roots in Marxism and is grounded in the Frankfurt school of critical theory (Booth 1991, 2005, 2007; Wyn Jones 1995, 1996; Krause 1998). The pioneers of this school of thought, Booth (1991) and Wyn Jones (1995), criticize the military and states-centered traditional approaches by concentrating on human emancipation. They claim that human emancipation and security are two sides of the same coin (Booth 1991: 319). The Aberystwyth School denounce the traditionalist view on security since they believe that the use of force and threats do not lead to security in its truest form.

According to Booth (1991) the state is the cause of insecurity since many human lives are lost by their own governments and not caused by threats outside of the sovereign state. Booth (2007: 112) argues that “emancipation seeks the securing of people from those oppressions that stop them carrying out what they would freely choose to do, compatible with the freedom of the individual. “

Aberystwyth School theorists stress that security issues are accepted through a process of human emancipation, which are determined through the real conditions of human suffering. The pessimistic security view of the Aberystwyth School offers an interesting angle into state oppression. Nevertheless, they lack in producing different types of security bodies other than states (Buzan and Hansen 2009: 206). Furthermore, the acceptance of security issues within the Aberystwyth School has a normative weakness in the ‘active’ process of human emancipation.<sup>2</sup>

According to Floyd (2007: 333), the main problem with the conceptualization of security as emancipation is that both Booth and Wyn Jones do not put limitations on security. It seems that the more security, the better it is. Floyd (2007: 333) then argues that neither of these pioneers of the Aberystwyth School explain when an issue is not a security issue. By framing all issues as security issues, one could question what the exact purpose of framing anything as a security issue is. In addition, since Booth (2005) does not provide the definitions of human needs and threats to the freedom of the individuals it is unclear when security takes over normal politics (Floyd 2007: 333)

### *The Paris School*

The so-called Paris School focuses on the practices of security through discursive premises. The main argument of this school of thought is that security is constructed and applied to various issues through the expertise of elites and routinized practices. Consequently, these practices shape the behavior of individuals and groups towards each other about certain issues (Bigo 2002, 2008; Huysmans 2006; Tsoukala 2005). Bigo (2006: 458-459) argues that certain practices of surveillance and border controls are not caused by speech acts (Wæver 1995; Buzan *et al.* 1998; Balzacq *et al.* 2015) but through creating professional networks of (in)security, the construction of meaningful systems that derive from these networks and the productive power of practices. The connection between practices and speech acts is essential for the scholars of the Paris School. Through labeling an issue or event as a crisis, new patterns of action are enabled or the persistence of old patterns is justified. This technique is called ‘crisis-labelling’ (Jeandesboz and Pallister-Wilkins 2014: 115).

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<sup>2</sup> If security as emancipation is a negative liberty, it is then in the interest of the oppressed that states do not take action on their part. For example, migrants need to be emancipated from state oppression (i.e. not restricting immigration), even though migrating removes them from state oppression. This point of criticism is in line with the arguments put forward by Barkawi and Laffey (2006) and Fierke (2007), stating that the subjective form of security through the Aberystwyth School is hard to conceptualize since it requires the moral authority of Western values on human rights.

The key premise of this practical approach is, at the same time, its weakness: it focuses on what security practices represent, instead of what these practices express (Balzacq *et al.* 2015: 13). The Paris School theorists attempt to solve these discursive problems by introducing instruments as a part of the practical process (Balzcaq *et al.* 2015: 13-14). These instruments, thereby, specify a security relation. The role of professionals in linking different issues, such as terrorism, migration, drug trafficking creates what Balzacq *et al.* (2015: 13) call a "security continuum". The issue linkage of these different agents must be taken into consideration when analyzing security through the practical lens. It is not that issues should not be linked, but that these types of issue linkage are never neutral.

*The EU PNR: how has it been accepted so far?*

The literature on Passenger Name Records has raised concerns from different academic positions. Many of these concerns are related to the lack of proportionality around privacy and data protection (Brouwer 2009, 2011; Guild and Brouwer 2006; De Hert and Papakonstantinou 2010). Lowe (2016) draws a comparison between the EU PNR proposals of 2011 and 2016, concluding that the EU PNR Directive of 2016 successfully met all the legal requirements. Kaunert *et al.* (2012: 475) and Pawlak (2009) argue that US are the most important partner for the EU in the fight against international terrorism and have influenced the shaping of EU interest in counter-terrorism (i.e. PNR). Some scholars (Bigo *et al.* 2015) have raised concerns about the EU democratic rule of law and the role held by the European Parliament when controversial instruments such as EU PNR are adopted. These scholars, some of them belonging to the Paris School of security issues, focused on accountable practices and existing instruments concerning EU PNR (Bigo *et al.* 2015: 2).

Since none of the previous scholars explained how the EU PNR has been accepted by the European Parliament serving as the targeted audience, the foundation of this dissertation has been established. The next chapter will set up the framework for mechanisms and concepts of securitization through the speech act theory to understand the role of the audience (i.e. the European Parliament) in the analysis of EU PNR.

# Securitization: A Speech Act Theory

“Security” is the act that takes politics beyond the rules and lifts issues above politics. Securitization is often seen as the extreme form of politicization (Buzan 1991; Wæver 1991, 1995; Buzan *et al.* 1998: 23). Copenhagen School theorists agree with the traditionalists that existential threats need to be dealt with extraordinary measures. However, according to the CS, the security agenda includes other than military threats and other referent objects than only the state. The concept of security is embedded within the discourse of security: (i) the presence of an existential threat and (ii) a call for exceptional measures.

That a certain issue is presented as an existential threat is what Buzan *et al.* (1998: 24) define as “a demanding criterion”. By prioritizing the urgency and immediate response to existential threat; an actor has demanded its right to present an issue as an existential threat that must be handled through exceptional measures (Buzan *et al.* 1998: 24-25, Wæver 1995). Therefore, security is a self-referential practice: an issue is only a security issue because it is labelled as one (Buzan *et al.* 1998: 24). One speaks of securitization when a securitizing actor uses the rhetorical meaning of an existential threat to take an issue outside of the procedures or rules of “normal politics”. Buzan *et al.* (1998: 29), in the end, see security as negative; a failure to deal with issues as normal politics and opt for the option where desecuritization moves issues out of the threat-defense and into the public sphere. The launch of an issue beyond normal politics is, in a way, a call for or legitimization of an exceptional measure. By doing so, one could deal with it without the normal rules of politics and regulations of policymaking (Buzan *et al.* 1998: 24; Taurek 2006: 54-55).

The intersubjective and socially constructed meaning of the securitization process does not mean that everything can become securitized. The rate of success for securitizing an issue depends on whether a securitizing actor has performed a securitizing move (i.e. claimed something is an existential threat to a referent object) and whether it has been accepted by an audience.<sup>3</sup> Whereby an existential threat could be anything capable of threatening the security of a referent object (Buzan *et al.* 1998: 29; Romaniuk 2015: 4). One could think of nuclear weapons, cyberattacks, climate change, transnational crime and so on (Erwin, Magnusan, Parsons & Tadjdeh 2012). In a similar vein, something becomes a threat when a securitizing actor frames it as such through the act of speech. In the discourse of security, the dramatization of an issue is, thus, highly important; by labelling something as security, an agent claims a need and right to treat the issue with exceptional measures.

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<sup>3</sup> According to Buzan *et al.* (1998: 25), the notion of ‘acceptance’ in this security context is determined through coercion and consent of an order.



Thus, Ole Wæver argues that the process of securitization is a Speech Act (Wæver 1995, Buzan *et al.* 1998: 25; Balzacq *et al.* 2015: 13-14). According to the Speech Act Theory: "It is the utterance itself that is the act (...) by saying it, something is done (like betting, giving a promise, naming a ship." (Wæver 1988; Austin 1975: 98ff). However, just uttering the word 'security' is not sufficient enough for something to be called a security speech act. There must be an existential threat that requires exceptional measures and there needs to be a targeted audience that accepts something to be called a security speech act.

To sum up, three steps define a successful securitization: "existential threats, emergency action and effects on interunit relations by breaking free of rules." (Buzan *et al.* 1998: 26; Williams 2003: 514). Thus, the speech act approach of security explains the role of the audience in accepting something as an existential threat that requires immediate actions in a more profound way.

### *Speech Act Theory*

In a democracy, debating on certain matters of security are inevitable in the public sphere. It is impossible for democracies to legitimize the use of extraordinary measures without having debates in the public sphere. Speech acts, however, reduce or suspend democratic debate by stating that the society is under threat and urgently needs 'exceptional measures' to deal with certain issues. Since the quality of security is supplied by politics an objective measure for security cannot take place. Nevertheless, studying the features of a threat is useful in the analysis of security. These features are specified as the "facilitating conditions" under which a speech act works. The facilitating conditions fall into two types: (i) the internal and linguistic-grammatical conditions to follow the procedures and rules of the act and (ii) the external, contextual and social conditions – the position of authority from which the securitizing actor makes an act (Wæver 1995; Buzan *et al.* 1998: 32; Austin 1975: 34).

The internal conditions of a speech act focus on the type of security, the grammar of security and a certain 'plot' that includes an existential threat with the urge for immediate response to this so-called threat. Different sectors use different dialects in addressing these internal conditions of a speech act. For instance, the political sector will most likely use 'sovereignty' and 'recognition' dialects. The external conditions of a speech act rely on two principles. First, and as mentioned earlier, the enunciator must be in a position where it exerts authority – although not necessarily defined as official authority. The second principle of the external speech-act condition focuses on threats. Tanks, hostile sentiments, pollution and so on are generally experienced as intrinsically threatening, and thereby function as facilitating conditions under which a speech act could work (Buzan *et al.* 1998: 33; McDonald 2009: 578-579).

Approaching security through a speech act lens requires the distinction between three types

of units of analysis: (i) referent objects, (ii) securitizing actors and (iii) functional actors. Referent objects are supposed to be existentially threatened and have a right or claim to survival. In traditional terms, referent objects were either the state or the nation. The size or scale of a thing determines whether it is a successful referent object; the middle scales of collectivities seems to be more successful as a referent object, than individuals, small groups or the humankind as a whole. The logic of securitization opens the door for other referent objects than the state. A referent object is basically that thing which requires the securitizing actor to say: "no matter what happens, it should survive, therefore we must..." (Buzan *et al.* 1998: 36).

Theoretically, the securitizing actor is in a position where it can shape anything as a referent object. In the practical sense, the securitizing actor is constrained by the facilitating conditions of a speech act. The role of the securitizing actor is, thus, to assert an issue as a security issue by declaring the referent object as something that is existentially threatened. A securitizing actor could be an individual or a collective (i.e. political leaders, lobbyists, governments etc. a) that performs the speech act (Buzan *et al.* 1998: 36, 40).

Another important unit of security analysis are functional actors. These actors are not referent objects neither securitizing actors that call for exceptional measures on behalf of the referent object. Functional actors significantly influence the decision-making procedure in the field of security. The European Data Protection Supervisor (EDPS), for example, is an actor that influences the decisions in the field of security concerning EU PNR. Although, it is not the referent object, nor the actor trying to securitize EU PNR (Buzan *et al.* 1998: 36).

Securitizing actors need capabilities to successfully perform securitization and convince the audience to accept an issue as a security issue that needs exceptional measures (Buzan *et al.* 1998: 25; Balzacq *et al.* 2015: 6). Next to the facilitating conditions, the securitizing actor must also have the material and symbolic capabilities for successfully carrying out a securitizing move. An example of material capability is economic or military capital. Authority or the social positions from which can be effectively enacted and mobilized is then part of symbolic capital. Since states historically have a monopoly on these capabilities, they are the ones with the greatest probability in carrying out a successful securitization (Floyd 2010: 22-23).

To sum up, a speech act (i.e. process of securitization) contains: (i) a referent object, (ii) an existential threat to the survival of the referent object and (iii) a call for exceptional measures which must be accepted by (iii) a targeted audience. The analysis of EU PNR parliamentary debates through speech acts will hopefully provide insight to the acceptance of the EU PNR as an exceptional measure and whether speech act theory is a successful approach in security studies.

# Analysis

## Actors

The main political actors concerning EU PNR are the European Commission, the Council and the European Parliament. The European Commission and the Council are pushing the EU PNR agenda since the beginning towards the European Parliament for the acceptance of EU PNR. Without the approval of the European Parliament, serving as the targeted audience of this securitizing move, the process of securitization is impossible. The European Commission and the Council serve as actors making the securitizing move so the audience, the European Parliament, accepts the issue of EU PNR. Throughout the analysis of the parliamentary debates its key actors, the Commission, Council and Members of Parliament (MPs), will be addressed to explain their political positioning regarding the EU PNR. For instance, some MPs are in favor of EU PNR and some are not - depending whether they belong to the opposition.

According to the theoretical framework of the Copenhagen School, EDPS and FRA serve as functional actors. These actors are not referent objects or securitizing actors. Contrarily, these institutions are influential in the decision-making procedures due to their expertise on fundamental rights. The European Parliament serves as the targeted audience, since it operates on the state level and must be convinced by the EC and the Council to formally support the EU PNR. Therefore, the EC and the Council serve as actors making securitizing moves.

<b>European Commission</b>	Responsible for initiating, administering and monitoring EU policies and legislation.
<b>The Council</b>	The Council is one of the key EU decision-maker, together with the European Parliament. It is responsible for negotiating and adopting legislative acts through 'decision'. The Council legislates on proposals submitted by the European Commission.
<b>European Parliament</b>	Democratically elected representatives of EU citizens and in some sectors sharing the power with the Council to determine EU legislation. Investigating the operation of other EU institutions.
<b>EDPS</b>	The European Data Protection Supervisor. Ensures that EU institutions are following people's right to privacy when processing their personal data.
<b>FRA</b>	Fundamental Rights Agency is the Centre for EU's fundamental rights expertise. FRA shares their expert advice on fundamental rights with EU institutions and helps making assure that the fundamental rights of EU citizens are protected.

### *The 9/11 PNR discourse*

The PNR debates around information exchange systems that were held in 2002 and 2003 focused on the EU providing complete PNRs to the US before departure. The justification to deliver PNRs from the EU was based on the 9/11 attacks. The purpose of mentioning 9/11 during the debates was not only to sympathize with the US but also to point out the threat of terrorism. According to the framework set out by the CS, one could state that the 9/11 attacks served as facilitating conditions to launch (new) PNR deals. In a similar vein, another argument in favor of the US and the PNR deal was that the Western democratic values had to be protected from terrorism (Argomaniz 2010). In other words, the Western democratic values served as the referent object that needs to be protected by the existential threat in the form of terrorism.

In addition, Commissioner Patten stated the following during a debate on March 12, 2003 about the cooperation between the US and EU concerning PNRs:

The Aviation and Security Act, passed by the US Congress on 19 November 2001, is one of a series of laws introduced in the United States after 11 September 2001, with one overriding aim: to enhance national security, in particular through transport security measures. The basic aim is to prevent terrorist acts by detecting potential perpetrators before they enter the country. (European Parliament, 2003)

The use of terrorism as a threat set the tone for further legitimization for using PNRs. During the same debate Commissioner Patten explains the security concerns of the US while at the same time acknowledges the concerns around data protection laws. Furthermore, the Commissioner uses a 'compliance' frame to emphasize that airlines not in compliance have a higher security risk and therefore will have to face consequences such as a fall in the amount of passenger carried per flight. Although, there are hints that something is threatened, the 'threat' does not comply with the two facilitating conditions of a speech act:

In this context, the United States Congress has required that carriers make passenger name record information available to US Customs upon request. The Commission shares the security concerns of the United States. Nevertheless, the United States measures have raised concern with regard to the respect of Community and Member States' laws on data protection (...) Moreover, airlines not in compliance risked being seen as higher security risks, with potential consequences for significant falls in passenger numbers (European Parliament, 2003).

The position of the European Commission throughout early debates on PNRs is clear, namely: Due to 9/11, the basic aim is to prevent terrorists (i.e. potential perpetrators) from entering the US and therefore information gathered through PNRs is highly needed. As demonstrated above, 'raising security concerns' and at the same time mentioning the 'higher security risks' do not imply an existential threat that calls for exceptional measures in the truest sense of a speech act. The

Commission and the Council are trying to launch the PNR deal towards securitization but it does not comply with the conditions of a speech act. Specifically, there are linguistic hints of political dialects such as protecting EU citizens from terrorism, yet no call for an exceptional measure has been made because something is being portrayed as a security threat. In addition, not all Members of Parliament (MPs) were convinced with the reasoning of the European Commission. MP Hernandez Molar of PPE-DE recognized the impact of the 9/11 attacks but raised concerns about data protection and the proportionality of this deal on March 12, 2003:

Commissioner Patten, we share the concern of the United States following the events of 11 September, but we also wish to say that we have an obligation to demand compliance with European legislation, specifically Directive 95/46/EC, which protects the transfer and use of personal data – in this case, of around 11 million passengers who make transatlantic flights every year. Article 25(6) of this directive even lays down a specific procedure for the transfer of data to third countries and, on this occasion, Commissioners, we believe that this procedure has not been adhered to (European Parliament 2003).

Additionally, Mollar (PPE-DE) used the ‘uncertainty’ frame to justify his concerns regarding the consequences airlines will have to face when this measure is implemented:

We also have a duty, of course, to protect the interests of the airlines, which have to comply, on the one hand, with the obligations imposed by US legislation and, on the other, with the principles of Community legislation. In the current situation, the airlines are facing considerable uncertainty (European Parliament, 2003).

The justification the Council and Commission provided unleashed heated comments during the 2003 PNR debate. The colleague of Mollar, MP Santini (PPE-DE), stated the following during on March 12, 2003:

The Commission has justified this measure by saying that airlines did not want to have the burden of creating filters and therefore gave immediate access, as they were afraid of the EUR 1000 fine, amongst other things. The Commission has also said that this would have prevented long queues for passengers arriving at the various destinations in the United States. Really, this explanation seems rather childish, to say the least: justifications that are not acceptable in that there is a complete breach – as has also been mentioned already – of directives and hence Community law.

In sum, the early PNR debates demonstrate the position of the European Commission that presented the request of the US for the usage of PNR data as a measure to fight against terrorism. However, providing a speech act in the truest sense of the theory was not to be found in the statements of the Commission. As stated above, some MPs such as Santini did not accept the justification provided by the Commission. Santini uses the term ‘childish’ to describe the justification. Following the logic of a speech act, it is sometimes unclear what the referent object is. The question, thereby, is: Are the citizens of the EU under threat or the long queues in US airports? If the referent

object (i) is unclear, the Council and Commission cannot make a securitizing move, saying: "no matter what happens, it should survive, therefore we must..." Furthermore, the skepticism of the MPs around the proportionality, the uncertainty of airlines, compliance, data protection laws and the usage of PNRs in general highlighted the early debates. So even if there is a clear securitizing actor, it cannot be associated with a speech act since the justification for the so-called act of this speech does not imply that there is an existential threat (ii) to the survival of the rather changing referent object, which needs exceptional measures (iii) in order to be accepted by the EP (iiii). Interestingly, the debates carried through 2006 and in 2007 the first proposal for a EU PNR system was a fact.

### *The Commission and the Council response*

The EU reached an agreement with Canada about PNR in 2016. In 2007 the European Commission addressed the need of a EU PNR system that monitors the entire air travel taking place within the borders of the European Union. The first proposal for this initiative, "Proposal for a Council Framework Decision on the use of Passenger Name Record (PNR) for law enforcement purposes", addressed as the 2007 PNR proposal, was received with mixed feelings from the European Parliament. The debates that took place in 2006 and 2007, therefore, form the analysis of this sections.

The debate in 2006 starts with the President-in-Office of the Council, Paula Lehtomaki, stating that the talks between the EU and the US were fruitful and avoided tensions between both regarding this issue. Whereas the previous debates primarily focused on the 9/11 attacks as some sort of facilitating condition to justify PNR usage, it is interesting to note that the President begins her speech as following on October 11, 2006:

Firstly, the temporary arrangement aims at ensuring the security of air passengers. This is vitally important (...) I am glad that the release of PNR data under the new agreement is aimed at the same 34 fields of data as in the earlier arrangement. Fourthly, the new agreement will guarantee the legal security of the public and that transatlantic flights will continue. At the same time it will ensure that airlines are able to operate viably (European Parliament, 2006).

After the criticism from many MPs, the European Commission shifted the focus off the threat frame and headed to the safety and data protection frame. However, this shift in framing still did not fully convince some MPs such as Ewa Klamt (PPE-DE) that the new agreement implements better data protection than the old agreement:

Now, airline passenger data may be passed on, as required, to all the American authorities responsible for combating terrorism. Passengers probably do not feel that this compromises their security – the opposite is more

likely to be the case – but my group, the Group of the European People’s Party (Christian Democrats) and European Democrats, has a strong sense that, by referring the case to the Court of Justice, certain Members of this House have done us all a disservice, for one thing that must be recognized today is that the new agreement affords no greater data protection than the old one (European Parliament, 2006).

Furthermore, Kaufmann (GUE/NGL Group) warned the Parliament on October 11, 2006 that the argument of combating terrorism is not sufficient enough to justify the collection and usage of airline passenger data. Interestingly, this example does show that, under the cloak of facilitating conditions of the speech act, using ‘terrorism’ as justification did not guarantee the acceptance of the EP (i.e. MP of the opposition in this case):

The real scandal is the fact that, in future, this all-powerful US authority will be able to routinely transmit data on European airline passengers to all the US authority’s active in the field of combating terrorism – which includes the CIA, and we all know what that is capable of. I should just like to remind my fellow Members that this House set up a special committee because the CIA, in the process of ‘combating terrorism’, was taking it upon itself to kidnap and torture Europeans, among them the German citizen Khaled El Masri. In the light of this, are we to believe that this notorious secret service will not do as it pleases with airline passenger data on our citizens? (European Parliament, 2006).

In a similar vein, Stavros Lambrinidis (PSE) touched the topic of protecting fundamental rights and fighting terrorism at the same time during the PNR debate on October 11, 2016. Lambrinidis argued that the case of PNR leaves a hole in the protection of our fundamental rights. In other words, the data protection frame has been used to criticize PNR so it remains a controversial topic, leaving another opportunity to investigate whether that is caused by a speech act:

The PNR and SWIFT cases reveal a dangerous political and legal black hole in the protection of our fundamental rights (...) the Council insists upon denying Parliament the role of an equal partner in fighting terrorism and in protecting fundamental rights (European Parliament, 2006).

Franco Frattini, Vice-President of the Commission, responds to the EP on October 11, 2016 as following:

(...) the United States is, as I believe, Europe’s foremost ally in the war on terrorism, or whether it is a problem. I consider it to be our foremost ally in the war on terrorism; this being so, it is clear that, just as we Europeans have constructed the Schengen area of security and affirmation of rights, we must start doing the same thing with the United States. Otherwise, we risk forgetting that the problem is terrorism, not the US (European Parliament, 2006).

Frattini hints at securitizing mobility by pointing out the construction of Schengen area and affirmation of rights without explicitly stating that this ‘referent object’ (i) is under threat. Commissioner Frattini addresses a certain threat called ‘terrorism’, however whether this is an

existential threat (ii) is debatable. Perhaps because there is no such thing as a constant referent object. The words 'we risk forgetting' do not imply that an immediate, exceptional measure (iii) is needed to protect the rights of EU citizens. Interestingly, the frame 'we, as Europeans' refers to EU citizens, whereas the formal audience (iiii) is the European Parliament. These differences in audiences question the speech act approach and the perhaps underdeveloped role of having several audiences simultaneously (Balzacq *et al.* 2015: 13- 15).

The outcome of the PNR debate in 2006 shows how the Commission started the debate as having met many concerns of the MPs regarding the implementation of an EU PNR system. The debate in 2006 left out the 9/11 attacks and focused on the data protection laws instead. Interest, once again, no statement of the securitizer (i.e. EC and the Council) met all the criteria of a speech act.

#### *Towards the first EU PNR proposal*

The transition period between the PNR debate in 2006 towards the first EU PNR proposal in 2007 received a lot of criticism. Interestingly, most of the criticism so far emphasizes on the lack of data provided to support PNR in all previous debates. In a debate on 12 July 2007, MP Pedro Guerrier (GUE/NGL) stated:

Unacceptable is the least that one can say about the recent agreement between the EU and the USA with regard to airlines transferring data contained in the Passenger Name Records (PNR) to the US Department of Homeland Security (DHS) (...) The data may be used for non-specified purposes and the period for which it will be kept will be increased from three and a half years to fifteen years (...) The agreement also refers to a possible future PNR system at EU level in one or more Member States, stating that this data could also be placed at the disposal of the DHS. In a word, intolerable (European Parliament, 2007).

The attitude of the EP has not much changed towards accepting the new PNR deal. The idea of a EU PNR system is even described as 'intolerable'. Another MP, Martine Rourke (PSE), criticized the PNR deal during the same debate:

Lastly, I condemn the lack of democratic control, the significant increase in the time in which personal data are held, up to a period of 15 years, and the absence of an evaluation in due form of this agreement. We asked for these points to form the basis of the new PNR agreement; I regret that the Council did not hear these requests from Parliament, 2007).

#### *Change in PNR context: facilitating conditions or something else?*

After the much-criticized EU PNR 2007 proposal, the 'Proposal for a Directive of the European Parliament and of the Council on the use of Passenger Name Record data for the prevention,



detection, investigation and prosecution of terrorist offences and serious crime' was adopted by the Commission on February 2011. In a broader way, a debate on the EU external strategy for PNR was held in 2010. During this debate held on November 10, 2010 the President-in-Office, Anemia Turtelboom stated:

I believe that the importance and necessity of Passenger Name Record (PNR) data have become clear in recent years. We need only think of the attacks in New York, and also of the failed attack on the flight from Amsterdam Schiphol to Detroit. Of course, in the last few days, too, we have noticed that the threat levels have remained very high. We need only look at information coming in from several Member States, and also the increased threat levels in a number of countries, such as France and Spain (...) I believe that the Commission and the Presidency have worked very hard in the PNR field in the last few months (European Parliament, 2010).

The previous statement is a change in the context of justifying PNR. In the early debates, I analyzed that the focus was primarily on 9/11, then it gradually changed towards data protection issues after much criticism from the MPs and eventually the failed attack on the flight from Amsterdam Schiphol to Detroit and the increase of threat levels in countries such as France and Spain justified the PNR proposal.

Birgit Sipped, on behalf of the S&D Group, argued on November 10, 2010 in favor of EU PNR and interestingly used the words terrorism and combating crime to justify PNR:

Mrs. Malmström has said that this is not about PNR data, but rather that all data that is collected should apparently serve the purpose of fighting terrorism and combating crime (European Parliament, 2010).

While during the same debate, Jaroslav Paška of the EFD Group specifically left out terrorism and used crime as a justification for securitizing mobility:

It is therefore a good thing that the European Commission has turned to the European Council with a request to begin talks between the EU and the US on the creation of a new framework agreement on the transfer and processing of personal data for the purposes of preventing, investigating, detecting or prosecuting crime, within the framework of police and judicial cooperation in criminal matters (European Parliament, 2010).

In addition, Petru Constantin Luhan of PPE (i.e. the largest political group and governing most seats in the Commission and the Council) argues in favor of the PNR system and emphasized the importance of why mobility should be securitized:

At a time of great mobility, we cannot enjoy security without an efficient exchange of data. It is our duty to protect our citizens against terrorist attacks and organized crime. However, a balance needs to be found between security and privacy (European Parliament, 2010).

Commissioner Turtelboom responds to the EP with the following statement:

I know that the Commission faces a very difficult task as soon as the mandates have been adopted by the Council; it will have to open the actual negotiations and strike a balance between what everyone here wants – that on which there is a broad consensus – namely, the protection of personal data, on the one hand, and, on the other, the clear tenor here in this assembly that says: we need these PNR data, we have a frequent need for information, precisely in order to protect us against terrorist attacks, for example (European Parliament, 2010).

Turtelboom addresses a certain threat and the frequent need for information to protect ‘us’ against terrorist attacks. However, there is no call for exceptional measures (ii) in the sense that the survival of the referent object (i) depends on it. The type of security dialects is not considered extremely threatening. This is the first time a statement of the Commission had the tendencies of a speech act. Interestingly, up until now no true speech act was found for the acceptance of the EU PNR. The 2016 PNR Directive has been linked to Paris and Brussels attacks and will be analyzed in the next part.

### *Paris Attacks and the EU PNR*

Rapporteur Timothy Kirk hope, opens the debate on April 13, 2016 and states the following:

(...)I have been urging this Parliament to support PNR for nearly five years, not just because of terrorism but because it tackles the worst and darkest kinds of criminality as well – human trafficking, child trafficking, drug trafficking, pedophiles, murderers and rapists. PNR does not just help bring perpetrators to justice, it can also save people from the horrors that criminality brings (European Parliament, 2016).

Kirk hope tries to emphasize how PNR not only combats terrorism but other kinds of criminality as well. However, in regards of the PNR issue the pattern shows the facility conditions (i.e. context) change the perceptions of the Commission and several MPs. The question here is: did a speech act change the debate on EU PNR? How have the Paris Attacks served as a facilitating condition to adapt EU PNR? During the Paris Attacks debate held on 25 November 2015 MP Jan Philipp Albrecht (VERTS/ALE) quite remarkably summed up the change in context:

Madam President, the recent terrible attacks have not been the first in Europe. We knew about the threat, and we owe it to the victims to reconsider if our actions are delivering effective security or not (...) The current proposal by the Council on an EU PNR directive is in fact an extraordinarily expensive model of 28 silos full of completely irrelevant information on innocent travelers. At the same time, we have already known for years who is on which plane in Europe, but we did not follow up on alerts regarding known suspects travelling to Syria and back to the European Union. This is why we need to focus. We need targeted information-sharing and joint investigations. This is what we should deliver and spend our money on – nothing else (European Parliament. 2015)

During the debate held on April 13, 2016 Commissioner Hennis-Plasschaert ends her contribution to the debate with the following statement:

As I said earlier there is no such thing as a single solution to stop the terrorist threat or organised crime. The PNR proposal does not represent a silver bullet. It is not a magic solution. It is an instrument. Surely it will be an

important instrument, even if not perfect. It is a European solution, and a European solution is far better than a patchwork of 28 different systems on a national level (European Parliament, 2016).

Again, the emphasis is on presenting the EU PNR as a European solution. As an instrument to stop terrorist threat or organised crime. The narrow conditions of a speech act fall short in the justification presented by the Commissioner. In other words, even though a threat has been defined (i.e. terrorist attack), no call for exceptional measure for the survival of a referent object has been made. Yet, the debate around EU PNR transformed and got accepted. This perhaps has to do with the role of functional actors and the fact that not a single moment defined the acceptance of EU PNR. Rather the push and pull between the three EU bodies, the functional actors and the facilitating conditions of the Paris and Brussels Attacks changed the perceptions of the MPs and cleared the way for the EU PNR 2016 Directive to be approved. This has little to nothing to do with the mechanisms of a speech act, as laid out in the theoretical framework. Perhaps for further studies, the role of functional actors could be of important value to understand the push and pull dynamics between the Commission and actors engaged in the decision-making process.

#### *The role of the functional actors*

The European Data Protection Supervisor (EDPS) published an article in 2011 arguing that the PNR proposal is disproportional and lacks the element of necessity. Furthermore, the EDPS raised concerns about the use of PNR data in a systematic, indiscriminate way towards all passengers travelling by air. In January 2015, Giovanni Buttarelli, once more expressed his concerns on a systematic, indiscriminate large collection of data of all citizens while raising the question if that is really needed. In a nutshell, under the implementation of a PNR system every single citizen of the EU could be a potential threat. (The European Data Protection Supervisor, 2011).

In a similar vein, the Fundamental Rights Agency published their opinion in 2011 suggested to limit the use of the EU PNR to serious transnational crime. The FRA reached to similar conclusions as the EDPS addressing once again the importance of the proportionality and necessity of the proposal (The European Union Agency for Fundamental Rights, 2011). Since no speech acts were found in the parliamentary debates it is interesting how the functional actors engaged in the decision-making process.

## *Results*

The analysis of EU PNR parliamentary debates shows that not a single speech act (referent object, existential threat, call for exceptional measure) was performed by the securitizing actors. The hypothesis of this dissertation, stating that the European Parliament, as the *targeted* audience, accepted EU PNR Directive through successful speech acts is overthrown since no speech acts were found in the analysis. Thus, the notion that security is language falls short to explain the process of EU PNR controversy and the analysis of the narrowness of speech act theory begins.

# Beyond the Speech Act

As mentioned earlier, the relation between actor and audience defines the concept of security. The only way a speech act is successful in securitizing is when it is accepted by the audience as such. The underlying conditions to make a speech work are the internal rules of language and the actor uttering that something is an existential threat that needs exceptional measures. The analysis of parliamentary debates on the EU PNR Directive has shown that the speech act approach is too narrowed and relies heavily on its performative role. In a similar vein, the speech act theory of the CS focuses too much on how security is articulated rather than the underlying condition that make securitization on its own possible (Buzan and Waever, 2003: 72-74).

The EU PNR parliamentary debates analysis also highlights the problem of the speech act theory with the logic of elite actors performing a securitizing move (Glover 2011). The overemphasis on securitizing actors who have the (official) power in articulating threats as security undermines the role other strategic actors play in the 'push and pull' processes of security. For instance, the speech act approach in the analysis of the EU PNR Directive focused on three key actors: the European Commission, the Council and the European Parliament serving as the audience.

The European Commission and the Council served as the securitizes and the EP as the audience, whereas functional actors (EDPS, FDA) automatically were left out of the audience acceptance framework. Put differently, the negotiation part of the decision-making process has no room in the speech act approach, even though the analysis shows that not one moment defined the acceptance of EU PNR (McDonald 2009: 571-572). Since no speech acts were found in the analysis of the EU PNR debates something else must have influenced how the EU PNR got accepted. In other words, the struggle for power between different, competing groups determines securitization.

The success rate of securitization depends merely on the acceptance of the audience. The concept of the audience determines whether something is posed and accepted as a security issue. Surprisingly, the notion of the audience is left out of the securitization framework. It is unclear how to identify an audience, the interaction with the securitizing actor and the ways of providing acceptance is left out. Inherently, the underdevelopment of the audience has to do with the one-sided story of security as a speech act. The CS would benefit from incorporating these points into a

framework of the CS and moving beyond the narrow definition of a speech act security (Floyd 2010: 49)

# Conclusion

In this dissertation, I pose the question how the European Parliament has accepted the once controversial EU PNR Directive. To analyze the 'controversy', I argue that the European Parliament has been convinced to accept the EU PNR as an exceptional measure through a process of securitization. The main argument, thus, was that according to Securitization Theory, the European Parliament accepted EU PNR Directive through successful speech acts. A critical discourse analysis was performed on seven parliamentary debates on EU PNR. The European Council and the Commission served as actors making securitizing moves and the European Parliament served as the formal audience needed to be convinced to adapt the EU PNR.

The literature review captured the main debates on how security issues get accepted. In line with the research, it ends with stating that no scholar investigated how the EU PNR is accepted by the European Parliament. The mechanisms of the securitization process lead towards an understanding of the speech act as the utterance for exceptional measures for an existential threat to the survival of a referent object that needs to be accepted by an audience. The analysis showed that speech acts did not lead to the acceptance of the EU PNR by the European Parliament, thereby rejecting the hypothesis (i.e. main argument) of this research. In other words, the analysis of the parliamentary PNR debates showed no speech acts being exerted.

This observation led towards the criticism of the securitization theory. First, the speech act approach is too narrowed and relies more on its performative role instead of the underlying conditions that make securitization happen. Second, the overemphasis on actors who have the power to articulate threats as security undermines the role of other key actors in the 'push and pull' process of security since the analysis shows that no single moment defined the acceptance of EU PNR. Third, security as a speech act leaves the role of the audience underdeveloped even though it is a key aspect of the speech act approach. Perhaps in the future the role of practices and that of functional actors in accepting EU PNR will deliver more insight on the acceptance of this policy.

Finally, in my honest opinion, future research on Securitization Theory will benefit from a serious revision of the speech act approach and through incorporating the mechanisms of several audience(s) into its framework.

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ARTICLE 29 DATA PROTECTION WORKING PARTY, (2011). *Opinion 10/2011 on the proposal for a Directive of the European Parliament and of the Council on the use of passenger name record data for the prevention, detection, investigation and prosecution of terrorist offences and serious crime.*

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Annexes: European Parliament 2003, 2006, 2010, 2016 debates on PNR.