

# A Truly Relevant and Responsive Air Passenger Bill of Rights

*Francisco Ashley L. Acedillo\**

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## I. FACTORS AFFECTING THE AIR TRANSPORT INDUSTRY

The phenomenal growth of air transportation in the country brought about by the liberalization of the civil aviation regulatory environment, the aggressive expansion of low-cost airlines, and the rise of family wealth, leading to more disposable income, which has seen more and more Filipinos traveling by air.

But, as our nation's air transportation infrastructure, especially our airports, bears more and more of this increase in demand for air transportation services, they also become more congested. This increase, and the resulting congestion, therefore becomes a challenge to the capacity of both airport operators and airlines to provide a safe and trouble-free traveling experience.

Low-cost carriers have recently been criticized for complaints arising from bumped off passengers, delayed or canceled flights, lack of mechanism to attend to stranded passengers, poor response to customer complaints regarding ticket re-bookings or fare refunds, and the non-provision of ancillary services for missed, rerouted, or canceled flights.<sup>1</sup>

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\* '11 M.B.A., Asian Institute of Management. The Author is currently the President of the Institute for Policy, Strategy, and Developmental Studies, Inc. He was a Member of the House of Representatives, 16th Congress, representing the Magdalo Party-list. While working in the House, he served as the Vice Chairman of the House Committee on Globalization and World Trade Organization and as a Member of the House Committee on Transportation, Subcommittee on Air Transportation.

Data from the Civil Aeronautics Board (CAB)<sup>2</sup> for the years 2007 to 2015 reveal that one airline has dominated the domestic passenger market — capturing, on average, 48.18% of the market.<sup>3</sup> In 2014, the same airline registered a 54.42% market share<sup>4</sup> — its highest thus far. This is quite phenomenal considering that the domestic airline passenger market itself has grown annually from 2007 to 2015 at an average rate of 10.16%,<sup>5</sup> except in

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1. See, e.g., Francisco Tatad, *Just a friendly advice, avoid Cebu Pacific*, MANILA TIMES, Sep. 13, 2015, available at <http://www.manilatimes.net/just-a-friendly-advice-avoid-cebu-pacific/218604/> (last accessed Jan. 31, 2017); Don Kevin Hapal, *Stranded Cebu Pacific passengers decry ‘terrible crisis management,’* available at <http://www.rappler.com/move-ph/balikbayan/news/138474-cebu-pacific-mumbai-stranded> (last accessed Jan. 31, 2017); & Rouchelle R. Dinglasan, *Airlines receive 91 complaints about summer travel, mostly about delayed flights*, available at <http://www.gmanetwork.com/news/story/305772/money/economy/airlines-receive-91-complaints-about-summer-travel-mostly-about-delayed-flights> (last accessed Jan. 31, 2017).
2. The Civil Aeronautics Board (CAB) is an attached agency under the Department of Transportation (DOTr) in charge of all economic aspects of air transportation in the country such as air service agreements, ticket pricing, regulations concerning carriage of passengers and baggage, code-share arrangements. See *An Act Creating the Civil Aviation Authority of the Philippines, Authorizing the Appropriation of Funds Therefor, and for Other Purposes* [Civil Aviation Authority Act of 2008], Republic Act No. 9497, § 4 (2008) & Civil Aeronautics Board, Homepage, available at <http://www.cab.gov.ph> (last accessed Jan. 31, 2017). The agency was created under Republic Act No. 776. See also *An Act to Reorganize the Civil Aeronautics Board and Civil Aeronautics Administration to Provide for the Regulation of Civil Aeronautics in the Philippines and Authorizing the Appropriation of Funds Therefor* [The Civil Aeronautics Act of the Philippines], Republic Act No. 776 (1952).
3. Cebu Pacific has dominated the Philippine low-cost carrier market over the past nine years. The percentages have been computed based on the Scheduled Domestic Passenger Data found in the CAB website. See Civil Aeronautics Board, *Scheduled Domestic Passenger Traffic 2007 — 2nd Qtr 2016*, available at [http://www.cab.gov.ph/statistics/item/scheduled-domestic-passenger-traffic-2007-2nd-qtr-2016?category\\_id=77](http://www.cab.gov.ph/statistics/item/scheduled-domestic-passenger-traffic-2007-2nd-qtr-2016?category_id=77) (last accessed Jan. 31, 2017).
4. *Id.*
5. *Id.*

2013, where it suffered a decline of about 1.14%<sup>6</sup> and in 2014, where there was a minimal growth of 0.09%.<sup>7</sup>

However, the same airline also registers the most number of customer complaints.<sup>8</sup> Said airline became the largest low-cost carrier in the country, benefitting from the boom in air travel and from putting in phenomenal numbers in terms of market share and revenue growth. Other domestic airlines have experienced similar growth and success. But, with this aggressive growth came a host of problems. Strictly speaking, these problems were not unique to the said airline, but could be said of the other airlines operating under the same business model.<sup>9</sup>

The mounting number of air passenger complaints took on a crescendo that forced the Philippine government to sit up and finally take notice. In 2012, the former Department of Transportation and Communication (DOTC)<sup>10</sup> and the Department of Trade and Industry (DTI) issued the Joint Administrative Order No. (DOTC/DTI JAO) 01-2012,<sup>11</sup> ordaining an Air

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6. *Id.*

7. *Id.*

8. The CAB has, so far, not released any compiled data as to the total number, types, and breakdown of air passenger customer complaints by airline. The Author qualifies his opinion based on his personal experience, having worked with the Office of the Director General, Civil Aviation Authority of the Philippines from 2008-2009 and, again, in 2011, as well as a cursory examination of news articles published online on domestic airlines as the subject of customer complaints. *See also* Dinglasan, *supra* note 1; Hapal, *supra* note 1; & Tatad, *supra* note 1.

9. *See, e.g.*, Lee Hyo-sik, *Delays, poor service plague foreign budget carriers*, KOREA TIMES, Apr. 20, 2014, available at [http://www.koreatimes.co.kr/www/news/biz/2016/06/328\\_155713.html](http://www.koreatimes.co.kr/www/news/biz/2016/06/328_155713.html) (last accessed Jan. 31, 2017).

10. With the passage of Republic Act No. 10844, the DOTC's communication functions were transferred, absorbed, or transferred and absorbed by the Department of Information and Communications Technology (DICT), and the latter was renamed to the Department of Transportation (DOTr). The Author was one of the principal authors of the DICT bill in the House of Representatives. Press and Public Affairs Bureau of the House of Representatives, House approves new Department of ICT on final reading, available at <http://www.congress.gov.ph/press/details.php?pressid=9084> (last accessed Jan. 31, 2017).

11. Department of Transportation and Communications & Department of Trade and Industry, Providing a Bill of Rights for Air Passengers and Carrier

Passenger Bill of Rights (APBR). The Joint Administrative Order (JAO) was merely an executive issuance without the force of law, and was perceived as a stopgap measure to placate the increasing number of discontented airline passengers.<sup>12</sup> But, in general, the JAO was still welcomed with joy and relief as, finally, the riding public has something to push back to the airlines in terms of better airline service. This is with the concomitant challenge of keeping costs manageable without sacrificing both safety and comfort. The CAB subsequently issued Economic Regulation No. 9,<sup>13</sup> and became the basis of any action on customer complaints arising from commercial air travel.<sup>14</sup>

## II. LAWS AND POLICIES BEARING ON AIR TRANSPORT

Two laws primarily regulate air transportation in the country. Under Republic Act (R.A.) No. 776,<sup>15</sup> the CAB continues to be the primary agency regulating the economic aspects of air transportation, including receipt of customer complaints against air carriers and regulation of sales agents, cargo sales agents, and airfreight forwarders.<sup>16</sup> R.A. No. 9497<sup>17</sup> designated the Civil Aviation Authority of the Philippines as the public

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Obligations, Joint Administrative Order No. 1, Series of 2012 [Air Passenger Bill of Rights] (Dec. 10, 2012).

12. See generally Rainier Allan Ronda, *DOTC, DTI to enforce air passenger bill of rights*, PHIL. STAR, Dec. 12, 2012, available at <http://www.philstar.com/headlines/2012/12/12/885004/dotc-dti-enforce-air-passenger-bill-rights> (last accessed Jan. 31, 2017).
13. Civil Aeronautics Board, Providing for a Bill of Rights for Air Passengers and Carrier Obligations (DOTC-DTI Joint Administrative Order No. 1 (2012)) Economic Regulation No. 9 [CAB, E.R No. 9] (Dec. 18, 2012).
14. See Air Passenger Bill of Rights, ch. V, §§ 17 & 19.
15. An Act to Reorganize the Civil Aeronautics Board and Civil Aeronautics Administration to Provide for the Regulation of Civil Aeronautics in the Philippines and Authorizing the Appropriation of Funds Therefor [The Civil Aeronautics Act of the Philippines], Republic Act No. 776 (1952).
16. *Id.* § 10 (A).
17. An Act Creating the Civil Aviation Authority of the Philippines, Authorizing the Appropriation of Funds Therefor, and for Other Purposes [Civil Aviation Authority Act of 2008], Republic Act No. 9497 (2008).

registry for aircrafts<sup>18</sup> and the general regulator of the technical, operational, safety, and security aspects of aviation.<sup>19</sup>

Supplementing these two laws are relevant provisions under Consumer Act of the Philippines,<sup>20</sup> the Civil Code,<sup>21</sup> the Magna Carta for Disabled Persons,<sup>22</sup> as well as the Expanded Senior Citizens Act of 2010.<sup>23</sup>

Article 1733 of the Civil Code is relevant in that it states that common carriers, in this case, air carriers “are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them[.]”<sup>24</sup> It follows that in the event of loss, destruction, or deterioration of the goods, air carriers are responsible,<sup>25</sup> unless they can prove that the loss, destruction, or deterioration was brought about by the causes specified in Article 1734:<sup>26</sup>

Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:

- (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
- (2) Act of the public enemy in war, whether international or civil;
- (3) Act of omission of the shipper or owner of the goods;

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18. *Id.* ch. VIII, § 43 (a).

19. *Id.* ch I, § 2.

20. The Consumer Act of the Philippines [Consumer Act of the Philippines], Republic Act No. 7394 (1992).

21. An Act to Ordain and Institute the Civil Code of the Philippines [CIVIL CODE], Republic Act No. 386 (1950).

22. An Act Providing for the Rehabilitation, Self-Development and Self-Reliance of Disabled Persons and Their Integration into the Mainstream of Society and for Other Purposes [Magna Carta for Disabled Persons], Republic Act No. 7277 (1992).

23. An Act Granting Additional Benefits and Privileges to Senior Citizens, Further Amending Republic Act No. 7432, as Amended, Otherwise Known as “An Act to Maximize the Contribution of Senior Citizens to Nation Building, Grant Benefits and Special Privileges and for Other Purposes” [Expanded Senior Citizens Act of 2010], Republic Act No. 9994 (2010).

24. CIVIL CODE, art. 1733.

25. *Id.* art. 1734.

26. *Id.*

- (4) The character of the goods or defects in the packing or in the containers; [and,]
- (5) Order or act of competent public authority.<sup>27</sup>

In all other cases, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence.<sup>28</sup> Furthermore,

A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.<sup>29</sup>

In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in Articles 1733 and 1755.<sup>30</sup>

### III. THE 17TH CONGRESS —

#### ANOTHER CHANCE FOR A TRULY RELEVANT AND RESPONSIVE APBR?

It is fair to assume that because of the subsequent issuances of the DOTC, DTI, and CAB, airlines would raise the quality of its services. However, this is not the case. Customer complaints kept coming in. In the three years of the 16th Congress, no less than six House resolutions were filed at the behest of several of the legislators' constituents,<sup>31</sup> who themselves became witnesses to the deterioration of the air travel experience. Finally taking notice, six House bills were filed, all calling for the APBR to form part of the law of the Philippines.<sup>32</sup> In fact, no less than the Author is also a proponent of

27. *Id.*

28. *Id.* art. 1735.

29. *Id.* art. 1755.

30. CIVIL CODE, art. 1756.

31. *See, e.g.*, Press and Public Affairs Bureau of the House of Representatives, Bill filed to protect the interest of airline passengers, *available at* [www.congress.gov.ph/press/details.php?pressid=7117](http://www.congress.gov.ph/press/details.php?pressid=7117) (last accessed Jan. 31, 2017) & Press and Public Affairs Bureau of the House of Representatives, Romulo advocates the rights of airline passengers, *available at* [www.congress.gov.ph/press/details.php?pressid=8205](http://www.congress.gov.ph/press/details.php?pressid=8205) (last accessed Jan. 31, 2017).

32. *See* House of Representatives, House Bills and Resolutions 16th Congress, *available at* [www.congress.gov.ph/legisdocs/?v=bills](http://www.congress.gov.ph/legisdocs/?v=bills) (last accessed Jan. 31, 2017).

House Bill No. 23, otherwise known as “An Act Ensuring the Rights of Airline Passengers by Providing Standards for Airline Carrier Services.”<sup>33</sup>

Instead of being proactive and forward-thinking, the 16th Congress merely reacted to an overwhelming clamor from the people. In one of several interviews granted to the media after the House Committee on Transportation approved the consolidated bill on the APBR on 29 September 2015,<sup>34</sup> this Author intimated that, “We simply could not ignore the mounting complaints of our airline passengers. Otherwise, we, in Congress, would be called deaf to their clamor.”<sup>35</sup>

That said, Congress *did* take action, but said action fell short of passing the APBR into law.

Having failed to hurdle the last Congress, the APBR is, once again, up for consideration in the 17th Congress. Currently, a total of six bills — four in the Senate and two in the lower House — have been filed by Senators Juan Miguel F. Zubiri,<sup>36</sup> Ralph G. Recto,<sup>37</sup> Emmanuel D. Pacquiao,<sup>38</sup> and

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33. An Act Ensuring the Rights of Airline Passengers by Providing Standards for Airline Carrier Services, H.B. No. 23, 16th Cong., 1st Reg. Sess. (2013). The House Bill was filed by the Author on 1 July 2013. It was co-authored by Rep. Gary C. Alejano, also of the Magdalo Partylist. *Id.*

34. Paolo Romero, *House panel OKs Air Passengers' Bill of Rights*, PHIL. STAR, Sep. 30, 2015, available at <http://www.philstar.com/headlines/2015/09/30/1505488/house-panel-oks-air-passengers-bill-rights> (last accessed Jan. 31, 2017).

35. *Id.*

36. An Act Protecting the Rights of Airline Passengers and Establishing the Duties and Liabilities of Airline Carriers, S.B. No. 1336, 17th Cong., 1st Reg. Sess. (2017).

37. An Act Providing for a Bill of Rights for Air Passengers, Penalizing Violations Thereof, and for Other Purposes, S.B. No. 863, 17th Cong., 1st Reg. Sess. (2016).

38. An Act Providing for the Protection of the Rights of Airline Passengers, S.B. No. 1059, 17th Cong., 1st Reg. Sess. (2016).

Joseph Victor G. Ejercito,<sup>39</sup> and Representatives Cesar V. Sarmiento<sup>40</sup> and Vilma Santos-Recto,<sup>41</sup> respectively.

But how do these legislative proposals stand against similar measures in other jurisdictions? Availing of research and discussions within the International Civil Aviation Organization (ICAO), its website states —

The [ICAO] is a UN specialized agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention).

ICAO works with the Convention's 191 Member States and industry groups to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable[,] and environmentally responsible civil aviation sector. These SARPs and policies are used by ICAO Member States to ensure that their local civil aviation operations and regulations conform to global norms, which[,] in turn[,] permits more than 100,000 daily flights in aviation's global network to operate safely and reliably in every region of the world.

In addition to its core work resolving consensus-driven international SARPs and policies among its Member States and industry, and among many other priorities and [programs], ICAO also coordinates assistance and capacity building for States in support of numerous aviation development objectives; produces global plans to coordinate multilateral strategic progress for safety and air navigation; monitors and reports on numerous air transport sector performance metrics; and audits States' civil aviation oversight capabilities in the areas of safety and security.<sup>42</sup>

The Convention on International Civil Aviation, drafted in 1944 by 54 nations, was established to promote cooperation and 'create and preserve friendship and understanding among the nations and peoples of the world.'

Known more commonly today as the 'Chicago Convention[,] this landmark agreement established the core principles permitting international

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39. An Act Establishing the Rights of Airline Passengers by Providing Standards for Airline Carrier Services, S.B. No. 896, 17th Cong., 1st Reg. Sess. (2016).

40. An Act Providing for a Bill of Rights of Air Passengers, H.B. No. 2042, 17th Cong., 1st Reg. Sess. (2016).

41. An Act Providing for a Bill of Rights for Air Passengers, Penalizing Violations Thereof, and for Other Purposes, H.B. No. 2611, 17th Cong., 1st Reg. Sess. (2016).

42. International Civil Aviation Organization, About ICAO, *available at* <http://www.icao.int/about-icao/Pages/default.aspx> (last accessed Jan. 31, 2017).



transport by air, and led to the creation of the specialized agency which has overseen it ever since — [the ICAO].<sup>43</sup>

Over the years, the ICAO has endeavored to achieve some harmony in varying regulations from country to country. The area of passenger rights is one such project.<sup>44</sup> During its Sixth Meeting in Montreal, Canada, the Organization’s Worldwide Air Transport Conference (ATConf) met for five days from 18 to 22 March 2013<sup>45</sup> to discuss:

- (1) [e]xamination of [k]ey [i]ssues and [r]elated [r]egulatory [f]ramework,<sup>46</sup> and
- (2) [c]onsumer protection[.]<sup>47</sup>

As a result of its discussions, the Secretariat released the working paper entitled “Consumer Protection and Definition of Passenger Rights in Different Contexts.”<sup>48</sup>

The following are the highlights of the working paper’s recent development toward legislation and regulation of air passenger rights —

Regulatory activity has expanded rights for issues linked to events such as flight delays, cancellations, and overbooking. These rules sometimes coexist with voluntary airline commitments, and have been applied in cases of massive travel disruptions. In 2004, the *European Union (EU)* adopted *Regulation No. 261/2004, Establishing common rules on compensation and assistance to passengers in the event of denied boarding, cancellation or long delay of flights*, the scope of which has been broadly construed in decisions by the European Court of Justice. In 2011, the European Commission decided to launch a public consultation on the possible revision of Regulation No. 261/2004. The *United States (U.S.) Department of Transportation (DOT)* has

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43. International Civil Aviation Organization, *The History of ICAO and the Chicago Convention*, available at <http://www.icao.int/about-icao/History/Pages/default.aspx> (last accessed Jan. 31, 2017).

44. See International Civil Aviation Organization, *Passenger Concerns*, available at [http://www.icao.int/RO\\_EURNAT/Pages/FAQ/faq\\_passenger\\_info.aspx](http://www.icao.int/RO_EURNAT/Pages/FAQ/faq_passenger_info.aspx) (last accessed Jan. 31, 2017).

45. Worldwide Air Transport Conference, Montreal, Canada, Mar. 18–22, 2013, *Consumer Protection and Definition of Passenger Rights in Different Contexts*, at 1, ICAO Doc. ATConf/6-WP/5 (Dec. 7, 2012) [hereinafter ICAO, *Protection and Rights in Different Contexts*].

46. *Id.* at 1.

47. *Id.*

48. *Id.*

promulgated a *2011 rule*, applying to U.S. and foreign air carriers operating aircraft of 30 seats or more to or from a U.S. airport. The rule increases compensation for passengers involuntarily denied boarding and establishes a maximum time (i.e.[.] three hours for domestic flights and four hours for international flights, during which time an aircraft may stay on the tarmac without allowing passengers to disembark).

Various consumer protection initiatives have been taken in other regions. In November 2004, the *Latin American Civil Aviation Commission (LACAC)* adopted *Recommendation A16-8 (Rights of the Users)*, urging its Member States to promulgate a set of rules protecting passengers holding confirmed reservations who have been denied boarding involuntarily. The regime provides passengers with the option to choose between reimbursement and alternative transport (including assistance relating to food/drinks, communications, and accommodations). *China (Rules of civil aviation passenger and baggage, Decrees No[.] 49 and 70 CAAC)*, *Saudi Arabia (Consumer Protection Regulation in 2005)[.]* and *Israel (Airline Passenger Rights law in 2012)* have also developed consumer protection rules. In *Singapore*, the *Civil Aviation Authority* has taken a *different approach by working with consumer representatives* to educate passengers on the key aspects of air travel, including what to consider when purchasing airline tickets and recourse options in the event of an airline service lapse.<sup>49</sup>

Canada has taken a unique approach to passenger protection rules in imposing no prescriptive rules —

[T]he *Canadian Transportation Agency* issues decisions addressing the rights of passengers. The Agency adopts a ‘*circumstance-focused approach*’ which requires consideration of the particular circumstances surrounding a passenger. The Agency, in five related recent decisions stated that[.] in some circumstances[.] a delay or cancellation will defeat the purpose of the trip and that, in such cases, the passenger should have the right to choose between continued travel and a full refund. It appears from these decisions that the obligation of an air carrier is not absolute and that its responsibility applies only for delays within its control.<sup>50</sup>

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49. *Id.* ¶¶ 2.1-2.2. (emphases supplied).

50. Worldwide Air Transport Conference, Montreal, Canada, Mar. 18-22, 2013, *Effectiveness of Consumer Protection Regulations*, ¶ 2.3.1, ICAO Doc. ATConf/6-IP/1 (Feb. 27, 2013) [hereinafter ICAO, *Effectiveness of Consumer Protection Regulations*] (emphasis supplied).

In August 2012, the State of Israel enacted an Airline Passenger Rights Law.<sup>51</sup> This law, which applies to both scheduled airline flights and charter flights<sup>52</sup>

provides for assistance (food, drink, [and] phone access) in case of flight delays. An option is provided to the passenger to cancel the reservation and receive a refund if the duration of the delay is between [five] and [eight] hours. For longer delays, compensation and accommodation are provided.<sup>53</sup>

The preceding discussions are only some of the more recent developments. Overall, there has been a proliferation of national passenger rights regimes in the past few years.<sup>54</sup> In sum, more than 50 countries have some forms of aviation-specific passenger rights regime.<sup>55</sup> Of these, 30 countries have introduced regimes during the period of 2006 to 2012.<sup>56</sup> The Philippines, in fact, first introduced such regulations through the DOTC/DTI JAO-01 in 2012.<sup>57</sup>

As the ICAO has observed, “[a] major challenge is the conflicting regulatory responses taken by different states. In certain cases, regulations apply based on the State of Registration of the carrier[.]”<sup>58</sup> while “others apply to flights to and from a state territory. This situation creates difficulties for airlines and confusion for passengers.”<sup>59</sup>

51. *Id.* (citing Arutz Sheva, Ben-Gurion Passengers Get New ‘Bill of Rights’, available at [www.israelnationalnews.com/News/News.aspx/158968](http://www.israelnationalnews.com/News/News.aspx/158968) (last accessed Jan. 31, 2017)) & Aviation Services Law (Compensation and Assistance for Flight Cancellation or Change of Conditions), 5772-2012 (Isr.).

52. ICAO, *Effectiveness of Consumer Protection Regulations*, *supra* note 50, ¶ 2.4.1.

53. *Id.*

54. Worldwide Air Transport Conference, Montreal, Canada, Mar. 18-22, 2013, *Consumer Protection: A Joined Up Approach Required Between Governments and Industry*, ¶ 2.1, ICAO Doc. ATConf/6-WP/68 (Jan. 31, 2017) [hereinafter ICAO, *A Joined Up Approach*].

55. *Id.*

56. *Id.*

57. See Aya Lowe, Air Passenger Bill of Rights is out, available at [www.rappler.com/business/17691-air-passenger-right-bill-out-in-time-for-christmas-traffic](http://www.rappler.com/business/17691-air-passenger-right-bill-out-in-time-for-christmas-traffic) (last accessed Jan. 31, 2017).

58. ICAO, *A Joined Up Approach*, *supra* note 54, ¶ 2.1.

59. *Id.*

The following table,<sup>60</sup> the Matrix of International Air Transport Association (IATA), United States (U.S), European Union (E.U.), and Philippine Positions on Consumer Rights compares various aspects of consumer rights in all stages of airline experience:

- (1) Before the travel,
- (2) During the travel,
- (3) After the travel, and
- (4) Passenger compensation.

| Item  | Voluntary Commitments by Airlines (IATA) <sup>61</sup> | Covered by U.S./E.U. Regulations | Covered Under DOTC/DTI JAO 01-2012 | Covered Under Current Philippine Proposed Legislation <sup>62</sup> |
|---|--|----------------------------------|------------------------------------|---|
| BEFORE THE TRAVEL   |  |                                  |                                    |   |
| Inform passengers of identity of carrier                  |  | Yes                              | Yes (E.U. only)                    | Yes   |
| Offer the lowest fare available                           |  | Yes                              | No                                 | No**  |
| Inform of possible availability of lower fares at website |  | Yes                              | Yes                                | No**  |
| Honor the agreed fare after payment                       |  | No                               | Yes (U.S. only)                    | Yes   |

60. The table is based on Appendix A — Summary of Consumer Protection Rules, as well as the Author's own research. ICAO, *Protection and Rights in Different Contexts*, *supra* note 45, at A-1-A-3.

|   |     |                 |      |      |
|---|-----|-----------------|------|------|
| Allow reservations to be held or cancelled  | No  | Yes (U.S. only) | No   | Yes  |
| Provide prompt ticket refunds   | No  | No              | Yes* | Yes* |
| Waive ticket restrictions (non-refundable, sequential use of flight coupons) in special circumstances | Yes | Yes (U.S. only) | No** | No** |
| Ensure pricing transparency   | No  | Yes (U.S. only) | Yes  | Yes  |
| Advise passengers regarding an airline's commercial and operational conditions                        | Yes | Yes             | Yes  | Yes  |
| Protect passengers against carrier insolvency   | No  | Yes (E.U. only) | No** | No** |
| Inform passengers of future flight disruptions  | Yes | No              | No** | No** |
| Publish contingency plans, customer service plans, and contracts of carriage (carrier website)        | No  | Yes (U.S. only) | Yes  | Yes  |

61. The International Air Transport Association (IATA) adopted its *Core Principles on Consumer Protection* in June 2013. International Air Transport Association, *Core Principles for Passenger Rights Regulation*, available at <http://www.iata.org/pressroom/pr/Pages/2013-06-03-03.aspx> (last accessed Jan. 31, 2017).

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These build on the global customer service framework, which they also adopted in 2000. Tony Tyler, International Air Transport Association Director General and Chief Executive Officer, Remarks at the IATA Legal Symposium in Berlin (Feb. 8, 2013) (transcript *available at* [www.iata.org/pressroom/speeches/Pages/2013-02-18-01.aspx](http://www.iata.org/pressroom/speeches/Pages/2013-02-18-01.aspx) (last accessed Jan. 31, 2017)). IATA was founded in April 1945, in Havana, Cuba. International Air Transport Association, The Founding of IATA, *available at* <http://www.iata.org/about/Pages/history.aspx> (last accessed Jan. 31, 2017) [hereinafter IATA, Founding of IATA]. “At its founding, IATA had 57 members from 31 nations, mostly in Europe and North America. Today[,] it has some 265 members from 117 nations in every part of the globe.” *Id.*

As the trade association for the world’s airlines, IATA represents some 265 airlines from 117 countries representing 83% of total air traffic. International Air Transport Association, About us, *available at* <http://www.iata.org/about/Pages/index.aspx> (last accessed Jan. 31, 2017) [hereinafter IATA, About us].

Philippine Airlines is the only domestic air carrier that is a member of the association. International Air Transport Association, Current Airline Members, *available at* <http://www.iata.org/about/members/Pages/airline-list.aspx?All=true> (last accessed Jan. 31, 2017).

62. IATA “support[s] many areas of aviation activity and help formulate industry policy on critical aviation issues.” IATA, About us, *supra* note 61. “The modern IATA is the successor to the International Air Traffic Association founded in the Hague in 1919 [—] the year of the world’s first international scheduled services.” IATA, Founding of IATA, *supra* note 61.

On the one hand, those with \* are considered progressive measures, given that they are covered under proposed Philippine legislation where, in other jurisdictions, they are not. On the other hand, those with \*\* are considered regressive, and are still not absent from Philippine proposals despite being covered in other countries.

63. Although there are no explicit provisions both in the pending bills and the DOTC-DTI Joint Administrative Order No. 1 governing code-share partners, air carriers not registered to operate in the Philippines, but which are otherwise allowed to operate within the Philippine territory, are proposed to be covered.

| DURING THE TRAVEL  |     |                 |      |                    |
|--|-----|-----------------|------|--------------------|
| Ensure good customer service from code-share partners  | Yes | Yes             | No** | No** <sup>63</sup> |
| Take measures to expedite check-in   | No  | No              | Yes* | Yes*               |
| Provide notification of delays, cancellations, and diversions  | Yes | Yes (U.S. only) | Yes  | Yes                |
| Provide notification of opportunity to deplane if possible   | No  | Yes (U.S. only) | No** | No**               |
| Assist in case of delay including long on-aircraft delays  | Yes | Yes             | Yes  | Yes                |
| Handle passengers denied boarding with fairness and consistency                                      | Yes | Yes             | Yes  | Yes                |
| Deliver baggage on time  | No  | Yes             | Yes  | Yes                |
| Properly accommodate the disabled and special-needs passengers (i.e., reduced mobility or allergies) | Yes | Yes             | Yes  | Yes                |

| AFTER THE TRAVEL   |                         |  |      |      |
|--|-------------------------|--|------|------|
| Submit data for regular consumer reports                 | No                      | Yes                                      | Yes  | Yes  |
| Respond to customer complaints                           | Yes                     | Yes                                      | Yes  | Yes  |
| PASSENGER COMPENSATION                                   |                         |  |      |      |
| Support an increase in baggage liability limit           | No                      | Yes                                      | No** | No** |
| Compensate for lost bags                                 | IATA position not known | Yes (U.S. only, E.U. position not known) | Yes  | Yes  |
| Compensate for flight cancellation/denied boarding/delay | IATA position not known | Yes                                      | Yes  | Yes  |

The ICAO, as the sole international regulator for air transport, is the first to consider arguments from the other side of the fence, especially from industry groups, like IATA, and other registered interest groups. They hasten to add that “[p]assenger rights regimes have profound cost implications for both passengers and businesses. For example, IATA estimates that compliance with [E.U.] Regulation 261-2004 will cost airlines [four billion euros] annually.”<sup>64</sup> Expectedly, this would cost passengers and shippers more, as air carriers pass on costs of compliance with these regulations to

64. ICAO, *A Joined Up Approach*, *supra* note 54, ¶ 3.1.



passengers.<sup>65</sup> The aviation industry has been constantly constricted by decreasing profit margins.<sup>66</sup> Moreover,

the cost of complying with multiple consumer protection rules can also damage competitiveness and render routes unprofitable, reducing connectivity and its associated benefits on economies and societies. ... Overlapping regulatory regimes also add to passenger confusion and uncertainty over what rights apply in any given scenario.<sup>67</sup>

As mentioned earlier in this Article, air transport infrastructure, especially in a developing country like the Philippines, has not kept pace with industry growth, resulting in capacity constraints. One need only look at the problems at the primary gateway of the country, the Ninoy Aquino International Airport (NAIA), to understand the impact of this lack of capacity. NAIA has long been known for repeated delays and cancellations due to air traffic control restrictions and other capacity management issues, which can have knock-on effects on other airports, even days after such delay or cancellation has taken place.<sup>68</sup> It could be argued that majority of delays are outside the control of airlines. According to the ICAO —

Articles 19, 22[,] and 29 of the Montreal Convention [of] 1999 define the scope and limits of an air carrier's liability for flight delays and delayed baggage. The Convention also specifies a maximum limitation period of two years for liability claims arising from international air carriage. Several existing passenger rights regimes seem to be in contradiction of the Convention, as they set out differing rules for compensation in the case of delays, or different limitation periods for claims. The current situation[,] therefore[,] creates legal uncertainty, in conflict with conclusions of [The Fifth Worldwide Air Transport Conference], which stated that States should minimize differences in the content and application of regulations with a view to avoiding legal uncertainty.<sup>69</sup>

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65. *Id.*

66. *Id.*

67. *Id.*

68. See Kimberly Jane Tan, House probe on NAIA as world's worst airport sought, available at <http://www.gmanetwork.com/news/story/236146/news/nation/house-probe-on-naia-as-world-s-worst-airport-sought> (last accessed Jan. 31, 2017). Louis Bacani, House probe on NAIA 'mismanagement' sought, PHIL. STAR, Apr. 21, 2014, available at <http://www.philstar.com/congress/articles/2014/04/21/1314399/house-probe-naia-mismanagement-sought> (last accessed Jan. 31, 2017).

69. ICAO, *A Joined Up Approach*, *supra* note 54, ¶ 3.3. The relevant provisions of the Montreal Convention provide —

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Article 19. Delay

The carrier is liable for damage occasioned by delay in the carriage by air of passengers, baggage[,] or cargo. Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agents took all measures that could reasonably be required to avoid the damage or that it was impossible for it or them to take such measures.

Article 22. Limits of Liability in Relation to Delay, Baggage[,] and Cargo

- (1) In the case of damage caused by delay as specified in Article 19 in the carriage of persons, the liability of the carrier for each passenger is limited to [4,150] Special Drawing Rights.
- (2) In the carriage of baggage, the liability of the carrier in the case of destruction, loss, damage[,] or delay is limited to [1,000] Special Drawing Rights for each passenger unless the passenger has made, at the time when the checked baggage was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum[,] if the case so requires. In that case[,] the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the passenger's actual interest in delivery at destination.
- (3) In the carriage of cargo, the liability of the carrier in the case of destruction, loss, damage[,] or delay is limited to a sum of 17 Special Drawing Rights per [kilogram], unless the consignor has made, at the time when the package was handed over to the carrier, a special declaration of interest in delivery at destination and has paid a supplementary sum[,] if the case so requires. In that case[,] the carrier will be liable to pay a sum not exceeding the declared sum, unless it proves that the sum is greater than the consignor's actual interest in delivery at destination.
- (4) In the case of destruction, loss, damage[,] or delay of part of the cargo, or of any object contained therein, the weight to be taken into consideration in determining the amount to which the carrier's liability is limited shall be only the total weight of the package or packages concerned. Nevertheless, when the destruction, loss, damage[,] or delay of a part of the cargo, or of an object contained therein, affects the value of other packages covered by the same air waybill, or the same receipt or, if they were not issued, by the same record preserved by the other means referred to in paragraph 2 of Article 4, the total weight of such package or packages shall also be taken into consideration in determining the limit of liability.

In addition[ ], there is a trend towards Courts applying local law when handing down decisions in certain specific cases in which the Convention should apply, bringing additional confusion to users[ ] and airlines.<sup>70</sup>

#### IV. CONCLUSION

If both the ICAO and powerful industry groups like the IATA are to be believed, there is great uncertainty on whether existing passenger rights regulations are actually delivering benefits to passengers. However, it must also be said that some domestic airlines, despite benefiting from the tremendous growth of air travel in the last one or two decades, have not

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- (5) The foregoing provisions of paragraphs 1 and 2 of this Article shall not apply if it is proved that the damage resulted from an act or omission of the carrier, its servants[,] or agents, done with intent to cause damage or recklessly and with knowledge that damage would probably result; provided that, in the case of such act or omission of a servant or agent, it is also proved that such servant or agent was acting within the scope of its employment.
  - (6) The limits prescribed in Article 21 and in this Article shall not prevent the court from awarding, in accordance with its own law, in addition, the whole or part of the court costs and of the other expenses of the litigation incurred by the plaintiff, including interest. The foregoing provision shall not apply if the amount of the damages awarded, excluding court costs and other expenses of the litigation, does not exceed the sum which the carrier has offered in writing to the plaintiff within a period of six months from the date of the occurrence causing the damage, or before the commencement of the action, if that is later.

#### Article 29. Basis of Claims

In the carriage of passengers, baggage[,] and cargo, any action for damages, however founded, whether under this Convention or in contract or in tort or otherwise, can only be brought subject to the conditions and such limits of liability as are set out in this Convention without prejudice to the question as to who are the persons who have the right to bring suit and what are their respective rights. In any such action, punitive, exemplary[,] or any other non-compensatory damages shall not be recoverable.

Convention for the Unification of Certain Rules for International Carriage by Air, arts. 19, 22, & 29, *opened for signature* May 28, 1999, 2242 U.N.T.S. 309 [hereinafter Montreal Convention].

70. ICAO, *A Joined Up Approach*, *supra* note 54, ¶ 3.4.

been quick to plow back the financial gains from the industry into making the Filipinos airline experience less problematic and more efficient. Although there is no argument as to the increasing lack of capacity of our country's airport infrastructure, as well as certain factors like weather (the Philippines is visited an average of 20 typhoons per year),<sup>71</sup> the prevailing view — and the overwhelming sentiment of the Author leans towards better regulations concerning air passenger rights.

While harmonization of what shall become the domestic consumer rights regime with those previously existing under current international treaty commitments of the Philippines is a welcome development for the local industry and our consumers, dividing the focus between specific provisions or passenger entitlements and those laid down existing international instruments already in place is also a workable approach. These may come in the form of the Montreal Convention<sup>72</sup> or even the Warsaw Convention<sup>73</sup> and Hague Protocol,<sup>74</sup> with the ultimate aim of striking a balance between ensuring the adequate protection of passengers without unduly burdening air transport with additional costs and operational complexity. Particular attention must be paid to the unintended consequences of APBR legislation, as these may in fact worsen the passenger experience rather than improve it.

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71. Jane J. Lee, *Why the Philippines is Being Battered By Yet Another Fearsome Typhoon*, available at <http://news.nationalgeographic.com/2015/10/151017-typhoon-koppu-philippines-hurricane-explainer-oceans-weather-atmosphere/> (last accessed Jan. 31, 2017).

72. Montreal Convention, *supra* note 69.

73. Convention for the Unification of Certain Rules relating to International Carriage by Air, *opened for signature* Oct. 12, 1929, 137 U.N.T.S. 11 [hereinafter Warsaw Convention].

74. Protocol to Amend the Convention for the Unification of Certain Rules Relating to International Carriage by Air, *opened for signature* Sep. 28, 1955, 478 U.N.T.S. 371 [hereinafter Hague Protocol]. The Warsaw Convention and the Hague Protocol were international treaties that came into effect on 13 February 1933 and 1 August 1963, respectively, and were named after the cities where they were ratified — in Warsaw, Poland and in the Hague, The Netherlands. The Warsaw Convention, on one hand, sought to regulate liability for international carriage of persons, luggage, or goods performed by aircraft for reward. The Hague Protocol, on the other hand, amended the Warsaw Convention, and was intended to become a single entity with the Warsaw Convention. It was pacifically designed to lay a basis of liability to be assigned to air-carriers in the event of an accident. *See* Warsaw Convention, *supra* note 73 & Hague Protocol, *supra* note 74.

The competition in the marketplace provides incentives to air carriers which offer a satisfactory customer experience to their passengers. Passengers, after all, are willing to crack open their wallets for the carrier that can provide them the best riding experience with the least bite out of their wallets. The consistent failure to achieve a voluntary and self-regulated minimum standard of air transport service for the riding Filipino public may have to be solved by the force of law. This Author, therefore, urges Congress to finally pass the measure regarding the matter.