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International measures to safeguard air consumer's rights during COVID-19

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Abstract:

The Airline industry plays a significant role in promoting economic development globally. Different trading blocs and regions have enacted common air travel policies seeking to regulate the interest of the industry players while protecting the welfare of consumers. This research examines how the international community, such as International Civil Aviation Organization (ICAO) and the International Aviation Transport Association (IATA), utilize several measurements to maintain the rights of air consumers during the COVID-19 pandemic. The research also addresses the existing protection mechanisms utilized in different conventions to oversee airline's obligations towards air consumer rights during COVID-19 pandemic. While extensive research has been done to assess the relevance of airline consumer protections and air carriers' legal obligations, little efforts have been directed to highlight these initiatives and recommendations during COVID-19 Pandemic. As it turns out, new set of requirements have a significant impact on air consumers and airline companies' growth and sustainability. Therefore, regulators and airline companies must work closely with the international organization in order to uphold air consumer rights during the pandemic and the consumers have to be informed on their rights.

Keywords: COVID-19 pandemic, airline companies, airline regulators, consumer rights and protection, international organization.

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Chapter 1: Introduction

Consumers are the most important factor for economic growth to take place in every economy, thereby making consumer protection a vital component of law and policy. Consumers must be protected from exploitation and unfair practices through the various consumer protection laws. Consumer protection rules have been introduced through different conventions and laws, it's been implemented to ensure the interests of consumers are safeguarded, and also to oversee and regulate the activities of the producers. Successful running of business activities in an economy depends entirely on the consumers. This makes it necessary for every jurisdiction to create laws that govern the operations of the producers, and furthermore to protect their consumers thus eliminating fraud and unfair practices.

Normal way of doing business was greatly affected by ongoing COVID-19 pandemic which has transformed the way businesses operate and meet air consumer needs. For the most part, businesses have been forced to comply with new government measures for containing the spread of the pandemic, including airport opening and closing, travel requirements by destinations, required medical report (example: PCR test or Vaccine passport) and special travel insurance for COVID-19, mask-wearing and rearranged sitting planning and occupation that maintain social distancing at the airport and onboard the aircraft were the airline fly on half capacity.

Hence the airline industry is the major casualty because of travel bans and strict sanitation and consumer service guidelines. In addition, there is increased pressure among airline companies to prioritise consumer rights, focusing more on addressing problems relating to flight delays, cancellations, and denied boarding.

1.2. Research Objectives

1.2.1. Research Statement

Airline passengers' rights vary significantly depending on jurisdiction and airline, and may arise out of international instruments, States' commercial traditions, consumer pressures, and developments in the airline industry.

1.2.2. Broad/Specific Objectives

Broad Objective

The aim of this research is, broadly, to determine the International measurement taken to protect air Consumers Rights.

Specific Objectives

The research moreover aims to satisfy several specific objectives:

1. international organization role in protecting the rights of the passengers.
2. to assess and compare convention provisions seeking to safeguard the welfare of airline consumers and regulate the activities of respective companies.
3. to compare the consumer protection initiatives by international organization and their responses to the efforts to safeguard air passenger rights.
4. to evaluate and compare the air passenger rights preference and determine the development of respective policies in the regions.

1.2.3. Research Questions

Considering the research aims to establish passenger rights protections in different conventions and the international effort to harmonize procedures, the research seeks to find answers to a range of questions guiding the research for the project. The major questions to be considered include:

- Which conventions or law provisions are implemented to protect passenger rights and regulate the airlines?
- What are consumer protection initiatives introduced by different international bodies and their response to passenger rights protection?
- How do they determine the development of policies? How do the

regions respond to consumer complaints?

- How has divergence in rights developed in an industry characterized by a high degree of technical and operational uniformity?
- Is a convergence towards a global set of rights (Terms of Carriage) likely?

1.2.4. Significance of the Topic

This study is essential in responding to the existing COVID-19 pandemic gaps in the various protection mechanisms being utilized to oversee the rights of air passengers. The research will target to identify the strategies being exploited to ensure air travel safety and convenience for all passengers, with the aim of noting key differences. Economic blocs are often a result of collaborative efforts as well as the willingness to relent on some demands for a common good. The research will assist in determining the progress made by the international organization in ensuring protection to passengers' rights and identifying necessary changes in the policies to further improve the industry during COVID-19 pandemic.

Air consumer rights in general appear to be less known for air passengers, whose procurements of services usually involve non-negligible costs, than for consumption situations on a similar economic scale. This may well be resulting from complex rule sets for inter-regional flights combined with an apparent reluctance amongst airlines to draw attention to the matter. The research's main significance is to offer a specific picture of airline obligations towards consumer rights during COVID-19 pandemic. hopefully, encourage the regulators and airline industry to work with ICAO for greater uniformity.

1.3. Methodology

1.3.1. Research Approach

The approach that was applied for this research was the qualitative research approach that significantly focused on obtaining critical information from various publications and research papers from various

databases. More importantly, the research assumed a comparative basis for specific jurisdictions to understand the airlines' obligations and facilitation towards air consumer during COVID-19. Research papers, published policies, and other legal elements were assessed. Most of the materials that were used for this research were obtained from pee-reviewed databases to ensure the quality of the research that was used for this research.

1.3.2. Research Design

The design that was adopted for the research was based on a content analysis approach. Various pieces of information were obtained from reliable sources in peer reviewed databases. The information about air consumer rights was effectively evaluated against airlines' obligations during COVID-19 pertinent conclusions on findings analyzed. Critical analysis was then done to determine the effectiveness of the practices and the applicability of various laws that guide air passenger-based issues in airlines across the regions.

Additionally, the literature review that was conducted provided insight into various concepts as part of the research. Understanding the conceptual elements and researching the key findings from the literature material was essential to enhancing the results of the research and ensured that crucial data was obtained based of the evaluation and analysis of the results that were obtained from the research.

1.3.3. Analysis of Data

The data obtained was analyzed qualitatively, and several key themes were isolated and evaluated based on the research objectives. This was imperative to ensure that an effective comparative analysis was undertaken and that every aspect was effectively analyzed based on the research objectives. More importantly, it was easy to establish the various con durable elements regarding the air passenger rights.

1.4. Literature Review

Like all other major sectors of the economy, the airline industry is highly regulated to protect consumers and ensure that airlines comply with

the set of laws and regulations. In the EU for example airlines are required to comply with multiple legislations relating to fair trade, unfair contract terms, access to travel for customers with mobility issues, customers' rights during flight disruptions, and price transparency. European Regulation (EC) No 261/2004(1) provides several guidelines concerning what airline companies should do when denied boarding and of cancellation or long delay of flights. The instructions include fully refunding the paid amount, re-routing via alternative flights at the earliest opportunity, and re-routing on a later date.

The need to protect the rights of individual passengers led to the formulation and enforcement of legal provisions enhancing the negotiation powers of the clients. Additionally, it became increasingly important to establish a balance between voluntary agreements and legal provisions in aviation. Respective organizations and interested groups are utilizing different approaches supported by consumer initiatives, such as educating passengers on key aspects of air travel, to effectively safeguard the rights of consumers and improve the convenience of using this mode of transport.

1.4.1. The Response to Consumer Complaints

Air travel policy has continued to become more liberal, at the same time the provision of consumer privileges has now come to the forefront, for instance, numerous countries have made regulations and provisions to provide passengers with free notification when flights are delayed or cancelled, and assurances of support when services are disrupted, especially during the spread of COVID-19. Besides, some of other services and initiatives were received in deferent motions between the International Organization and the airlines regulators.

1.4.2. Lack of uniformity of International and National Regulations

(1) Proposal for a regulation of the European Parliament and of the Council amending Regulation (EC) No 261/2004 establishing common rules on compensation and assistance to passengers in the event of denied boarding and of cancellation or long delay of flights and Regulation (EC) No 2027/97 on air carrier liability in respect of the carriage of passengers and their baggage by air, cit.

There are over sixty countries that have some sort of air passenger protection rules out, and they're not coordinating with each other, often the country where you're departing from may not have the same rules as the country you're arriving to. Therefore, its necessary and more efficient if passengers know their rights. Unfortunately, that is not the case because it's very complex, therefore we need to do more in partnership with governments to make that happen. In the industry level they are working in partnership with governments in order for passengers to understand their rights when traveling internationally, for example in the UAE, airlines are voluntarily committed to offering quality services to their consumers. Etihad and Emirates Airlines have been availing carrier services to their wide customer base through Abu Dhabi and Dubai Airports. These international airlines are expected to adhere to the unique policies guiding aviation activities in their different destinations. These companies are prioritizing the protection of consumers from potential mistreatment being propagated by the potential lack of information. One of the rules in the UAE is for the airline firms to provide sufficient high-quality meals, free of charge, to their clients in case of disruption of their travel schedule ranging more than three hours from the expected departure time. Additionally, if the disruption is over eight hours and requires an overnight stay, then the airline should provide accommodation to the passengers.

To achieve uniformity in regulation between different countries is bound to be developed through engaging the International Civil Aviation Organization (ICAO) as an agency under the United Nations (UN) tasked with overseeing the aviation sector among (193) contracting member states. ICAO is also involved in the planning and development of a measure that ensures the airline industry's safe and progressive development. The agency formulates principles to assist in protecting air passenger rights and stimulating industry competitiveness. It encourages all states to reflect on rules of proportionality and look out for the effects of massive disruptions as well as consumer protection provisions consistent with international treaty regimes. Another international body should play a vital role in this matter is the International Air Transport Association (IATA) which is another organization established to assist in realizing cross-regional uniformity in the policies implemented to safeguard air passenger rights. This corporation

proposes that rules established to protect passengers should be designed as a partnership between consumers and industries to promote competition, innovation, consumer confidence and improve air connectivity.

The extra-territorial application of national rules often creates a challenge for international companies, leading to unpredictability and exposing airline firms to risks and legal setbacks. The companies are incurring significant expenses and difficulties in adhering to the different policies. Furthermore, extra-territorial laws are linked to tension between respective states and the firms offering airline services as they are blocked from applying another country's policies.

This lack of uniformity in the regulations governing aviation companies from different nations and regions is contributing to difficulties in serving consumers. The effort to implement international laws to replace domestic laws has been limited by the inability of nations to agree on common policies where COVID-19 pandemic has exacerbated the issue.

Chapter 2: Instigation of Air Consumer Rights in Carriage by air Conventions

Mobile industries with frequent international activities need regulatory homogeneity to ensure cross-border business can be pursued in a seamless environment. The more uniformity in rules, the easier business flows.(1) This is pursued through conventions that constitute the essence of international law. Being tailored to the specific subjects they address, conventions differ in numerous respects, but their common trait is that ratification obliges the contracting States to adhere to certain provisions - or, at the very least, to refrain from introducing national legislation or regulations running contrary to the applicable convention.

(1) Eman Naboush, (2017). Uniformity Application of the Carriage by Air Conventions and Treaty Rules of Construction. *IJRDO-Journal of Social Science and Humanities Research.* ISSN: 2456-2971.Volume-2. Issue-9. Sep, 2017.

2.1 Warsaw Convention 1929

Initial international steps towards safeguarding passengers' rights were taken in the Warsaw Convention of 1929(1), which introduced specific requirements for passenger tickets (Article 3)(2) and luggage tags (Article 4)(3) as contracts that were subject to the rules of the Convention. Carriage of goods (cargo) was also dealt with in detail and Warsaw formulated the rule that carriage performed by several successive carriers is deemed ... to be one undivided carriage, thereby precluding carriers from escaping responsibility by placing the onus for pinpointing the root cause of an error on the customer. The rules of the Warsaw Convention have been expanded upon in the intervening ninety years, but the foundation remains in place.

The dictum that nature abhors a vacuum is equally applicable in legal and regulatory contexts. When the delegates framing the Warsaw, provisions were setting to work, they had to overcome the difficulties arising from different national legal practices in relation to what was deemed "a wrong". In some states the plaintiff (the passenger/customer) needed to corroborate either willful or inadvertently harmful actions, while in other States it was sufficient to substantiate error by omission with the burden of proof being heavier in the former case (The Postal History of ICAO). This shows how quickly national practices diverge in the absence of international law.

Article 19(4) determines that "The carrier is liable for damage occasioned by delay in the carriage by air of passengers, luggage or goods" and establishes an important consumer protection principle. The delay clause was the subject of considerable debate as it was recognized from the outset to have potential consequences for the airlines. Conversely, the proponents' argument that, in procuring an air ticket, the customer is essentially buying a saving of time and that absolving airlines from any liability in failing to

(1) Retrieved May 06, 2021 from World Wide Web: https://www.iata.org/contentassets/fb1137ff561a4819a2d38f3db7308758/mc99-full-text.pdf

(2) Article 3 of Warsaw Convention 1929.

(3) Article 4 of Warsaw Convention 1929.

(4) Article 19 of the Warsaw Convention 1929

deliver in this respect would be harmful to the industry by removing the primary justification for travelling by air.

Article 19 was incorporated into Montreal 1999(1) with the substance of Warsaw Article 20 incorporated as a caveat:

"Nevertheless, the carrier shall not be liable for damage occasioned by delay if it proves that it and its servants and agent took all measures that could reasonably be required to avoid the damage or that it was impossible for them to take such measures."

The burden of proof is a major issue in passenger rights because of the disparity of the parties involved in legal disputes. In 1929, the complexity of the aviation sector was such that a typical passenger would face almost insurmountable difficulties in gathering the evidence required to win in court. Even wealthy passengers' resources were minuscule compared to those available to the air carriers, who tend to pursue their cases beyond what would be deemed worthwhile for the discontented passenger. Airlines' persistence is rooted in the wider implications of legal precedents. Therefore, the general legal principle that claimants must bear the burden of proof was reversed in Article 20 of the Warsaw Convention 1929. This was a significant departure from the legal norm at the time.

The Warsaw Convention took effect in 1933 and has since been ratified by 152 States (ICAO Contracting Parties to Warsaw, 1929).

2.2. Montreal Convention 1999

The Montreal Convention of 1999(2) that entered effect in 2003 and currently has been ratified by 132 States which is 68% of the total are Parties to it This Convention has the principal benefit of amalgamating the contents of two conventions and six protocols, as well as specifying the relationship with other Warsaw Convention instruments in Montreal Article

(1) The Montreal Convention 1999 (MC99) establishes airline liability in the case of death or injury to passengers, as well as in cases of delay, damage or loss of baggage and cargo.

(2) Montreal Convention 1999. Retrieved May 06, 2021 from World Wide Web: https://www.iata.org/en/policy/smarter-regulation/mc99/

55, saying it shall prevail over(1) the various instruments forming part of the Warsaw system. This has greatly simplified the situation for the 132 current contracting States in that they can use Montreal 1999 as a single source of international law within its purview. Conversely, the Montreal Convention of 1999 did not contain a clause to eliminate the Warsaw Convention 1929. Therefore, complexities remain for States, such as Afghanistan, Iran and Kyrgyzstan, who have ratified the Warsaw Convention of 1929; but not the Montreal Convention of 1999. Although they are not major players in the aviation field, they carry passengers in and out of UAE airports and remain obliged to Warsaw-type Conditions of Carriage. Moreover, States like Somalia, South Sudan, Tajikistan and several Caribbean and Pacific Island States have neither ratified the Montreal Convention of 1999, nor the instruments within the Warsaw system. These States are of limited significance in air transport, but their failure to subscribe to international law pertaining to aviation liabilities constitutes a latent weakness in passengers' rights.

Not to forget in this regard an important aspect of the Montreal Convention 1999 that seeks to safeguard passengers is stipulated in Article 19(2): "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 19 of the Montreal Convention 1999). The clause expresses that the airline is responsible for damage caused by delay in passenger or cargo transport. The clause also highlights that the carrier can be exempt from liability if it substantiates that they took all the necessary measures to prevent damage. The question of what comprises "all reasonable measures" is one for the fact finder therefore the particular proofs and events both being the cause for the delay and the reaction of the airlines to accommodate passengers due to the delay in each case will determine if liability occurs and the extent

(1) Article 55 of Montreal Convention 1999, referencing relationship with other Warsaw Convention instruments stated: "This Convention shall prevail over any rules which apply to international carriage by air."

(2) Article 19 of Montreal Convention 1999.

of available damages, a passenger's capability to recover under Article 19 is an issue to the per-passenger liability cap of 4694 Special Drawing Rights.(1)

In 2016 Resolution A39-9 subject "Promotion of the Montreal Convention of 1999" was adopted during the 39th Assembly of the International Civil Aviation Organization (ICAO) which was supported by the International Air Transport Association (IATA) encourages all States to ratify Montreal Convention 1999 as soon as possible(2).

(1) The liability limits are set in Special Drawing Rights (SDR), which are a mix of currency values established by the International Monetary Fund (IMF). The current value of one SDR in US dollars is approximately $1.41 (revised daily). The ICAO reviews the liability limits every five years. (International Monetary Fund, Factsheet, Feb. 18, 2021).

(2) A39-9: Promotion of the Montréal Convention of 1999 Recalling its Resolution A37-22, Appendix C, relating to the ratification of instruments which have been developed and adopted under the auspices of the Organization, and Resolution A38-20, Promotion of the Montréal Convention of 1999; Recognizing the importance of achieving a universal regime to govern airline liability to passengers and shippers on international flights; Recognizing the desirability of an equitable, fair and convenient system for compensation for losses; The Assembly: 1. Urges all Contracting States to support and encourage the universal adherence to the Convention for the Unification of Certain Rules for International Carriage by Air, done at Montréal on 28 May 1999 (Montréal Convention of 1999); 2.Urgesall Contracting States that have not done so to become Parties to the Montréal Convention of 1999 as soon as possible; and 3.Directs the Secretary General to provide assistance, as appropriate, with the ratification process if so requested by a Contracting State.4.Declares that this resolution supersedes Resolution A38-20.

2.3. Chicago Convention 1944

By contrast, the Chicago Convention of 1944(1) has strong and durable provisions in Articles 80-83, obliging contracting States to abrogate existing inconsistent agreements and to refrain from entering into new ones, unless consistent with Chicago. Even then, such other agreements must be registered with ICAO. As per Article 38 of Chicago Convention 1944 (2), deviation from Standards in the 19 Annexes to the Chicago Convention must be notified to ICAO, which publishes them in Supplements while robust audit regimes prevent States from hiding discrepancies. With the exception of Liechtenstein, all the United Nations' 193 contracting States have ratified Chicago Convention 1944, Especially important to highlight

(1) The Chicago Conference was held at the invitation of the United States, from 1 November to 7 December 1944. The main aims of the conference were to draw up a Convention on International Civil Aviation, to replace those of Paris (1919) and Havana (1928), and to establish a world body as an Agency of the United Nations Organization to oversee civil aviation, to be called the "International Civil Aviation Organization" (**ICAO**), and to establish a framework for the technical standards to be developed.

(2) Article 38, Chicago Convention 1944:" Any State which finds it impracticable to comply in all respects with any such international standard or procedure, or to bring its own regulations or practices into full accord with any international standard or procedure after amendment of the latter, or which deems it necessary to adopt regulations or practices differing in any particular respect from those established by an international standard, shall give immediate notification to the International Civil Aviation Organization **(ICAO)** of the differences between its own practice and that established by the international standard. In the case of amendments to international standards, any State which does not make the appropriate amendments to its own regulations or practices shall give notice to the Council within sixty days of the adoption of the amendment to the international standard or indicate the action which it proposes to take. In any such case, the Council shall make immediate notification to all other states of the difference which exists between one or more features of an international standard and the corresponding national practice of that State".

that the terms (Facilitation)(1) under Annex 9 aiming to ensure access to all Passengers in need of particular assistance. Furthermore, Article 14(2) has set frameworks and agreements to address how International Civil Aviation Organization (ICAO) plays vital role during disease spread (like: COVID-19 pandemic). States: Each contracting State agrees to take effective measures to prevent the spread by means of air navigation of cholera, typhus (epidemic), smallpox, yellow fever, plague, and such other communicable diseases as the contracting States shall from time to time decide to designate, and to that end contracting States will keep in close consultation with the agencies concerned with international regulations relating to sanitary measures applicable to aircraft. Such consultation shall be without prejudice to the application of any existing international convention on this subject to which the contracting States may be parties (Article 14 of the Chicago Conventions 1944).

2.4. United Nation (UN)

Protection of the consumers is guaranteed by setting the minimums for the quality standards that ensure the protection of the consumers. In numerous countries, measures to protect consumers have been adequately implemented. Consumer protection was introduced globally by the guidelines issued by the United Nations Guidelines on Consumer Protection (UNGCP).(3) The guidelines have been used by different countries as a foundation in the development of various laws for consumer protection. The second part of the guidelines provides the general principles which states:

(1) The term 'facilitation' refers to a wide range of matters and activities concerning, for instance, the carriage of goods and passengers, or conducting flight operations. In particular, Article 22 of the Chicago Convention 1944 expressly provides that: 'Each contracting State agrees to adopt all practicable measures, through the issuance of special regulations or otherwise, to facilitate and expedite navigation by aircraft between the territories of contracting States, and to prevent unnecessary delays to aircraft, crews, passengers and cargo, especially in the administration of the laws relating to immigration, quarantine, customs and clearance.'

(2) Article 14 of the Chicago Convention 1944.

(3) United Nations Guidelines for Consumer Protection, Resolution 39/248 of 16 April 1985, resolution 70/186 of 22 December 2015.

"2. Governments should develop or maintain a strong consumer protection policy, taking into account the guidelines set out below and relevant international agreements. In so doing, each Government should set its own priorities for the protection of consumers in accordance with the economic, social, and environmental circumstances of the country and the needs of its population, bearing in mind the costs and benefits of proposed measures" (UNGCP,1999, p.2).

These are valuable principles that have been agreed upon that guide the features of effective legislation, the redress systems, and the enforcement institutions that assists the state members during the establishment and enforcement of both the regional and domestic laws. The guidelines ensure the laws established are suitable for the social, environmental and economic factors in the regions. The guidelines moreover enhance cooperation in the global enforcement in the member states.(1) Importantly, that "Facilitation"(2) indicates: "Contracting States shall not prevent an aircraft from calling at any international airport for public health reasons unless such action is taken in accordance with the International Health Regulations (2005) of the World Health Organization."(3)

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(1) United Nations, (2021). *Guidelines for Consumer Protection.* Retrieved Apr. 19, 2021 from the World Wide Web: https://unctad.org/webflyer/united-nations-guidelines-consumer-protection

(2) Under paragraph 2.4 of Chapter 2 of ICAO Annex 9.

(3) A complaint in the early stages of the COVID-19 pandemic by the International Air Transport Association (IATA) is illustrative of the interplay between these legal provisions. Argentina. On April 28, 2020, that announcement by the Argentinian government that it had banned commercial sales on flights until September 1, 2020. IATA reportedly sent a letter to the Argentine government suggesting that the decision conflicted with the existing ASAs, however precisely how was not entirely clear publicly. At most, 2.4 of Annex 9 permits countries to implement public health measures, but it is silent on refusing airlines of trading partners' airspace entry. Alternatively, IATA's position may be that *passengers* may be subject to quarantine (as necessary), but *aircraft operations* should not be restricted. Regardless, this may be the beginning of international legal challenges with respect to the scope and intent of ICAO's Facilitation provisions. Retrieved May 06, 2021 from World Wide Web: https://www.iata.org/en/pressroom/pr/2020-04-07-03/

Chapter 3: International Organization Initiatives towards Air Consumer Protection during COVID-19

Powered flight started on December 1903 less than 120 years ago on the Atlantic coast of the United States there was no Air Law, Standards or Regulations. And the aircraft flown 37 meters lasted for 12 seconds at a speed of 11 km/hr. Nowadays, aircraft (Airbus A350-1000) can reach almost any point on Earth in a single hop it can cover 16,000 Km at a speed of 950 Km/hr and it can be in the air for 17 hours with a full load of passengers. Such long flights will unavoidably stretch across many countries and many legal jurisdictions. Unless the rules are coordinated and aligned, no aircraft could meet the rules in an economical manner. The creation of a unified set of rules – International Air Law – is the task of The International Civil Aviation Organization (ICAO) and it is handling it well. Therefore, without rules there are no safety and insurance, and without safety and insurance, there are no passengers. This will lead to the downfall of the business. Therefore, the center of the business is the "passenger". The stakeholders and The International Air Transport Association (IATA) should work toward unifying set of rules to protect passenger right, which will consequently shed light on the international efforts to overcome issues related to operational delays or cancellations occasioned by airport congestion and inadequate eventuality planning in the event of severe weather for example. Another vital aspect is the heightened travel time linked with the passenger agreement with security measures and argument that numerous consumers have responded negatively to the changes in airfares.

3.1. International Civil Aviation Organization (ICAO)

The International Civil Aviation Organization (ICAO)(1) has done significant work in the sector of consumer protection. Member States of ICAO have retained ICAO to be the legal body for the air transport sector. One of the works done is the "Convention for the amalgamation of specific guidelines for International Carriage by Air", also termed as the Montreal Convention 1999, which was implemented through a diplomatic meeting by ICAO member states in 1999. The Convention offers some provisions that safeguard the rights of the passengers. A total of 193 countries are signatories of ICAO. Out of the 193, about 65 percent have adopted the Montreal Convention guidelines. ICAO has established guidelines on consumer interests in sectors such as fare guarantees, denied boarding, baggage, and carriage conditions. The guidelines are contained in the "Policy and Guidance Material on the Regulation of International Air Transport" (Doc 9587). The details for air transport consumers are also published in the "Manual on the Regulation of International Air Transport" (Doc 9626) as a way of encouraging the publication materials meant to inform consumers of their rights and responsibilities. It is vital to note that be issues relating to traveler with disabilities are covered in the context of the "ICAO Facilitation Program."(2)

(1) The Convention on International Civil Aviation (also known as Chicago Convention) was signed on 7 December 1944 by 52 States. Pending ratification of the Convention by 26 States, the Provisional International Civil Aviation Organization (PICAO) was established. It functioned from 6 June 1945 until 4 April 1947. By 5 March 1947 the 26th ratification was received. ICAO came into being on 4 April 1947. In October of the same year, ICAO became a specialized agency of the United Nations linked to Economic and Social Council (ECOSOC). Retrieved May 06, 2021 from World Wide Web: https://www.icao.int/secretariat/technicalcooperation/pages/history.aspx

(2) ICAO Annex 9 (titled *Facilitation*), under paragraph 8.16 of Chapter 8, specifies that, with respect to communicable diseases, States are required to establish a national aviation plan as well as a national facilitation programme and subsequent oversight committee. States are also bound, as per 8.12 of Chapter 8 of Annex 9, to comply with health provisions as issued by the World Health Organisation (WHO), another UN agency with whom ICAO works closely.

In 2015, in response to a proposal made by ICAO member states, the ICAO Council ratified non-binding, fundamental principles for air passengers.(1) The core guidelines are meant to serve as a "living document", which can amend and improved in future. The approach indicates that international policymaking in this area remains a work-in-progress, which is fascinating considering that the "global" law on air carrier accountability has existed for more than a decade. ICAO's core principles for safeguarding passengers are classified based on the stages of travel: before travel, during actual travelling and after travel.

ICAO states that passengers should be granted access to information regarding their rights and other protection before travel, together with help in the event of service interruption. Passengers should be assisted about price or service offerings, and consumer education to heighten their awareness of rights and possible ways of addressing an issue. The last principle under the before travelling category provides for passengers to understand all the product's relevant features, including airfare and charges, all general conditions applicable to the fare and the operating airline.

During travel, ICAO principles state that passengers should be notified about special situations affecting the journey, particularly if there is an interruption to the service. Passengers should also receive the necessary attention in case of flight re-routing, refund or compensation based on the relevant rules. The third principle under the travel category provides for passengers to receive adequate help in case of circumstances comprising of massive disruptions that make them vulnerable. Furthermore, ICAO expects passengers to be provided with access to air transport in a non-discriminatory way with relevant support if they have disabilities. The principle under the after-travel category stipulates that passengers should be offered clear communication on how to express their complaints about handling procedures.

(1) Economic Development, ICAO core principles on consumer protection. Retrieved May 06, 2021 from World Wide Web: https://www.icao.int/sustainability/SiteAssets/pages/eap_ep_consumerinterests/ICAO_CorePrinciples.pdf.

At first sight, the core principles seem like ICAO member states' guidelines to use when setting to create new, general consumer safeguards and national laws for providing air consumers with specialized rights. The main concern is how best to merge the core principles with the air passenger rights regimes implemented worldwide. It is essential to understand that the core principles are not linked with the Montreal Convention 1999 provisions. Air passenger rights legislation seeks to highlight what happens to the passengers and what occurs during a flight. The objective of such legislation is to safeguard passengers from their susceptible position, especially when stranded by offering help and, if the cause is established to be not an unusual circumstance, to hold the airlines accountable for failing to follow the necessary procedures.

The core principles also clearly stress the need for member states to inform consumers of their rights once they disembark and for carriers to be full transparency and guarantee clear communication. The explanation illustrates that travelers may be located in multiple jurisdictions on a single journey; often, the locations are not the passengers' permanent residence. It should not be problematic for a passenger to obtain information on their rights and make a complaint at the airline's booking before departure when service interruption occurs during the travel or after arrival at their destination. To attain a seamless regulatory cover system on passenger rights, more coordination between stakeholders is required on the international stage. Although ICAO knows that individual governments should have the flexibility to come up with relevant national consumer protection rules, it also warns that any national regimes should create a balance between guaranteeing consumer protections and facilitating airline industry competitiveness. As an international industry, air transport impacts several different states, and each has unique social, economic and political features. Air passenger rights legislation should therefore exhibit the principle of proportionality, acknowledge the impact of major disruptions, and stay in line with international regimes such as the Montreal Convention 1999 (ICAO Economic Development, 2013).

However, in early March 2020 ICAO adopted a Declaration that recalled the aforementioned Article 14 and urged States to adopt the provisions and Standers and Recommended Practices (SARP)s of Annex 9, to collaborate

with public health in information sharing and join the Collaborative Arrangement for the Prevention and Management of Public Health Events in Civil Aviation (CAPSCA) furthermore on April 2020 ICAO positioned itself to offer forward guidance on passenger's protection and to establish harmonization in standard safety protocols by lunching a COVID-19

Aviation Recovery Task Force (CART).[1]

(1) The work of the ICAO Council's Aviation Recovery Task Force (CART) is aimed at providing practical, aligned guidance to governments and industry operators in order to restart the international air transport sector and recover from the impacts of COVID-19 on a coordinated global basis. The CART's work on its recovery Report and the accompanying 'Take-Off" guidance for international aviation, has kept the health, safety, and security of the travelling public of paramount concern throughout. The CART recommendations and guidelines will be continuously reviewed and updated based on the latest medical and operational advice and are intended to harmonize and not replace the COVID-19 recovery roadmaps currently established by States, Regions, or industry groups: **Recommendation 1** During the global COVID-19 outbreak, Member States should continue updating COVID-19 Contingency Related Differences (CCRDs) in the Electronic Filing of Differences (EFOD) subsystem. **Recommendation 2**Member States should avoid retaining any COVID-19 related alleviation measures as soon as normal operations are resumed. Differences that remain after the contingency if any should be filed in the EFOD system. **Recommendation 3** Member States should expedite the development of guidance for the safety management of new operations or operation change during this crisis. **Recommendation ٤** Global and regional harmonization of procedures is essential to strengthen public and passenger confidence in air travel. To that end, Member States should establish aviation public health procedures aligned with the guidance in the *Take-off: Guidance for Air Travel through the COVID-19 Public Health Crisis*. **Recommendation ٥** In order to support the fastest possible return to normal aviation operations, Member States should regularly review the necessity of continuing the application of risk mitigation measures as the risk of COVID-19 transmission diminishes; and measures that are no longer needed should be discontinued. **Recommendation ٦** Member States that have not done so should immediately establish a National Air Transport Facilitation Committee (or equivalent) as required by Annex 9 to increase national level cross-sectoral coordination. **Recommendation ٧** Member States should systematically use a Passenger Health Locator Form to ensure identification and traceability of passengers to help limit the spread of the disease and resurgence of the pandemic. **Recommendation ٨** While temporarily adapting their security-related measures, using the guidance provided, Member States should strengthen their oversight system to ensure these measures are consistently applied with the objective of protecting aviation against acts of unlawful interference. **Recommendation 9** Member States should take measures to ensure that relevant personnel are provided training to identify and manage unruly passenger situations related to non-respect of essential aviation public health and safety measures. **Recommendation 10** Member States should consider appropriate extraordinary emergency measures to support financial viability and to maintain an adequate level of safe, secure and efficient operations, which should be inclusive, targeted, proportionate, transparent, temporary and consistent with ICAO's policies, while striking an appropriate balance among the respective interests without prejudice to fair competition and compromising safety, security and environmental performance. **Recommendation ١١** Member States should facilitate information-sharing and exchange on their actions and best practices by contributing to an ICAO database of measures. Retrieved May 06, 2021 from World Wide web: https://www.icao.int/covid/cart/Pages/CART-Report---Recommendations.aspx.

3.2. The International Air Transport Association (IATA)

The International Air Transport Association (IATA)(1) serves as the trade association of the international airline industry. Currently, IATA has 293 members accounting for about 82 percent of the worldwide air traffic. IATA helps carriers and air passengers by minimizing costs and enhancing efficiency. IATA safeguards air passenger rights through its core principles on consumer protection.(2) The first core principle highlights that national and regional laws should be reliable and applied in line with the international treaty laws on airline accountability, brought by the Warsaw Convention of 1929 and the amended aspects conveyed in the Montreal Convention of 1999.(3) The second core principle stipulates that both national and regional laws should not inhibit another state's capability to make lawful policy choices. Simultaneously, in adherence to the Chicago Convention of 1944, passenger rights laws should only be pertinent to events happening within the borders of the legislating state or beyond the territory in relation to the aircraft registered there. The third core principle on protecting consumer rights highlights that passenger rights legislation should permit carriers to distinguish themselves through specific customer service offerings, thereby granting passengers the liberty to choose an airline that suits their desired price and service level. Governments should consider allowing voluntary commitments in the industry; government regulation should be the least concern, and market forces should be allowed to control additional standards of service.

(1) IATA was founded in Havana, Cuba, on 19 April 1945. It is the prime vehicle for inter-airline cooperation in promoting safe, reliable, secure and economical air services - for the benefit of the world's consumers. The international scheduled air transport industry is more than 100 times larger than it was in 1945. Retrieved May 06, 2021 from World Wide Web: https://www.iata.org/en/about/history/

(2) IATA, Consumer Protection, Retrieved May 06,2021 from World Wide Web: https://www.iata.org/en/policy/consumer-pax-rights/consumer-protection/

(3) Truxal, S. (2017). Air carrier liability and air passenger rights: a game of tug of war. *Journal of International and Comparative Law*, 4(1),pp. 103-122.

The fourth core principle highlights that passengers should provide information regarding their legal and contractual rights and clear guidance of which legislation applies to specific circumstances. Passengers should have unrestricted access to information related to fares, including taxes and relevant charges, before buying a ticket. IATA's core principles also provide for passengers to be offered clear information about the specific carrier operating the flight in case of code-share service. The fifth core principle states that airlines should use the best efforts to ensure that passengers are regularly updated in case of service disruption. The sixth core principle requires carriers to set up and maintain proper complaint handling approaches and clearly communicate the information to passengers. The seventh core principle focuses on safeguarding the rights of passengers with a disability. IATA provides for airlines to provide the necessary support to passengers with mobility challenges in a way that abides with the relevant safety regimes and operational considerations.(1)

Passenger rights enshrined in the regulations have to be consistent with the principle of proportionality and the effect of unexpected circumstances. IATA maintains that there should be no compromises with regard to safety and passenger rights safeguarding. Safety-related delays or flight cancellation, for instance, those resulting from technical problems with an aircraft, have to be regarded as extraordinary circumstances such as saving the airline from the responsibility of such delays and cancellations.(2) Through IATA's guidelines, the industry acknowledges the right to re-routing or refunds in the event of circumstances such as denied boarding and cancellations, where the situations were within the airline's control. Conversely, in the event where delays and journey disruptions are beyond the carrier's control, the government should consider the air carriers forced to establish the assistance available to travelers.(3) IATA's principles also

(1) Truxal, S. (2017). Air carrier liability and air passenger rights: a game of tug of war. *Journal of International and Comparative Law*, 4(1),pp. 103-122.

(2) Francesco, R. (2015). *EU Legal Framework for Safeguarding Air Passenger Rights*, (ISBN 978-3-319-08090-1 (eBook)) Springer Cham Heidelberg New York Dordrecht London. pp 157-181

(3) Truxal, S. (2017). Air carrier liability and air passenger rights: a game of tug of war. *Journal of International and Comparative Law*, 4(1),pp. 103-122.

highlight that the regulator's liability, in relation to care and assistance and refunds, has to be fairly and allocated between the various service providers and should not interfere with all service providers' contractual and liberty.

IATA's opinion is that regulation should be established as an industry and consumer partnership that will promote consumer confidence, promote connectivity by air, innovations and encourage competition rather than defending the passengers.

Chapter 4: Conclusion and Recommendations

4.1. Conclusion

Many countries follow different policies to ensure the protection of air passengers' rights. Air consumers deserve fair treatment by various stakeholders in the aviation industry. The states are continually revising their policies to safeguard the welfare of passengers while promoting development in the sector. These states are aiming to maximize efficiency and ensure air passenger rights are safeguarded, especially during the COVID-19 pandemic.

While the carriage by air conventions impose compensation for delay, passengers are not guaranteed compensation when their flight is cancelled, the conventions equally put into consideration some unavoidable circumstances such as Pandemic restrictions imposed by certain countries are sufficiently extraordinary circumstances vindicating non-compensation of passengers who had their flights cancelled and in order to qualify for such exemption from liability air carriers must, first of all, prove that they have embraced all appropriate steps to avoid causing passengers inconvenience.

4.2. Recommendations

ICAO should continue to take on a leadership role in creating and enforcing policy guidance - "ICAO Core Principles on Consumer Protection"- to tackle emerging issues related to air transport consumer protection internationally, putting into consideration the interests of states, passengers and the stakeholder in the aviation industry. Most importantly, ICAO should seek to achieve a uniformity in the regulations governing airlines companies in different states and regions by encouraging coordination approaches employed by the relevant organization like the United Nations World Tourism Organization (UNWTO).

Another paramount role ICAO is to oversee consumer protection issues to enable states to prioritize the need to establish a more formal arrangement, such as an international code of conduct to enhance air passenger protection a similar approach was adopted by ICAO for sharing safety information in 2011.(1)

Consumer protection rules are always changing therefore passengers need to be updated with latest regulations of the airline flying with, specifically subjects related to (Delay, Cancellation, Denied boarding or Pandemic Travel Update) this information should be available with the National Civil Aviation Authority of each country which should promote them under "Passengers Awareness Campaign". Finally, the mechanisms for requesting, assistance and launching complaints in the event of consumers' rights violation needs improvement across all regions in order to assure that passengers are informed about their rights and know where and how to seek compensation.

(1) Protection and enhance global aviation safety via State of Global Aviation Safety – ICAO. Retrieved May 06, 2021 from World Wide Web: https://www.icao.int/safety/Documents/ICAO_State-of-Global-Safety_web_EN.pdf

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التدابير الدولية لحماية حقوق المستهلك الجوي خلال جائحة كورونا

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ملخص البحث:

تؤدي صناعة الطيران دورًا مهمًا في تعزيز التنمية الاقتصادية على مستوى العالم؛ إذ قامت الكتل التجارية والأقاليم المختلفة بِسَنّ سياسات موحده للسفر الجوي؛ الهدف منه تنظيم مصالح الجهات الفاعلة في الصناعة مع حماية رفاهية المستهلكين. يتحقق هذا البحث من الآلية التي ينتهجها المجتمع الدولي، مثل: منظمة الطيران المدني الدولي (ICAO)، والاتحاد الدولي للنقل الجوي (IATA)، والعديد من الإجراءات للحفاظ على حقوق المستهلك الجوي أثناء جائحة كورونا 19. يتناول البحث أيضًا آليات الحماية الحالية المستخدمة في الاتفاقيات المختلفة للإشراف على التزامات شركات الطيران تجاه حقوق المستهلك الجوي أثناء جائحة كورونا 19. على الرغم من وجود بحوث مكثفه لتقييم أهمية حماية المستهلك مع شركات الطيران والالتزامات القانونية لشركات النقل الجوي، إلا أنه تم توجيه القليل من الجهود لتسليط الضوء على هذه المبادرات والتوصيات خلال جائح كورونا 19. كما يتضح أنه توجد مجموعة جديدة من المتطلبات لها تأثير كبير على المستهلك الجوي ونمو شركات الطيران واستدامتها. لذلك، يجب أن يعمل المنظمون وشركات الطيران عن كثب مع المنظمة الدولية من أجل دعم حقوق المستهلك الجوي أثناء الوباء ويجب إبلاغ المستهلكين بحقوقهم.

الكلمات الدالة: جائحة كورونا 19، شركات الطيران، منظمو شركات الطيران ، حقوق المستهلك وحمايته ، منظمة دولية.

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