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Agenda Item 3: Strengthening regulatory and institutional frameworks
3.3: Strengthening emergency planning mechanism and consumer protection for a resilient aviation system

THE RECIPROCAL SIDE OF AIR PASSENGER CONSUMER PROTECTION: PASSENGER CONDUCT, PROCEDURAL SAFEGUARDS AND LEGAL CERTAINTY IN BRAZIL'S RESOLUTION No. 800/2026

(Presented by Brazil)

EXECUTIVE SUMMARY

The International Civil Aviation Organization's (ICAO) Core Principles on Consumer Protection set out what passengers should receive before, during and after travel, and are under review following the 42nd Session of the Assembly. They do not address the conduct expected of passengers, nor the response available to the carrier when that conduct endangers or disrupts the service provided to everyone else on board. This paper argues that the omission leaves three consumer interests without a rule: that of the co-passengers who bear the cost of disruptive behaviour, that of the passenger against whom a carrier acts in the absence of procedure, and the interest in legal certainty that ATConf/7-WP/6 places among the objectives of a more harmonized framework.

Brazil presents Resolution No. 800/2026 of its National Civil Aviation Agency (ANAC), fully in force since 14 September 2026, as a case in which a measure ordinarily classified as a security rule performs consumer protection functions. The Resolution replaced the prevailing practice of rebooking the disruptive passenger on the next flight with a graduated regime based on a closed list of serious acts, written into the general conditions of carriage, subject to procedural safeguards for the passenger concerned and to scrutiny of the carrier's own contributory conduct. Brazil offers this experience as input to the ongoing review of the Core Principles.

1. INTRODUCTION

1.1 The Seventh Worldwide Air Transport Conference (ATConf/7) considers consumer protection and emergency planning under a single agenda item, on the premise that passenger confidence and the resilience of the air transport system depend on each other. In ATConf/7-WP/6, the Secretariat proposes that national frameworks provide "clear, consistent and transparent provisions, including well-defined roles and obligations of airlines, intermediaries and other service providers", so as to "reduce legal uncertainty and litigation". In ATConf/7-WP/42, Thailand calls for a whole-of-system approach that recognizes the respective roles of all parties involved in the passenger journey.

1.2 The central proposition of this paper is that the list of parties whose obligations must be well defined remains incomplete without the passenger. The contract of carriage is performed in a confined space shared by all passengers of the flight, where the conduct of one of them affects the service received by the others, and where the carrier's response to misconduct affects the rights of the passenger concerned. A framework that defines the obligations of one party alone leaves both effects to the discretion of the carrier or to litigation after the fact.

1.3 The subject lies within the economic mandate of the Organization. Resolution A42-5, Appendix E, which urges States to legislate on unruly and disruptive passengers, opens by recalling that, under the Preamble and Article 44 of the *Convention on International Civil Aviation*, one of the aims of the Organization is to meet the needs of the peoples of the world for safe, regular, efficient and economical air transport. Resolution A42-17, Appendix C, addresses the same subject among the continuing policies on facilitation. Brazil presents its experience under Agenda Item 3.3 because the design choices of its regime respond to consumer protection problems, whichever classification the regime receives in other fora.

2. THE UNADDRESSED SIDE OF THE CONTRACT OF CARRIAGE

2.1 The Core Principles, adopted by the Council in 2015 in follow-up to Recommendation 2.3/1 of the Sixth Worldwide Air Transport Conference (ATConf/6), are organized around what passengers should receive before, during and after travel, and they allocate obligations to States, carriers, airports and intermediaries. The only reference to action by the passenger is the encouragement to persons with disabilities to give advance notice of their needs. The balance they strike, as mandated by ATConf/6, is between the protection of consumers and the competitiveness of the industry. The relationship among consumers of the same service falls outside that balance.

2.2 That relationship has an economic structure of its own. A disruptive passenger imposes costs on those who share the cabin: risk to their physical integrity, delay, return to the gate, diversion and, among others, the loss of the journey. Neither price nor liability internalizes those costs. The fare paid by the disruptive passenger is the same as that paid by the others, and the costs of a diversion fall on the carrier and on the co-passengers (of future flights for sure). In the absence of a rule, the carrier's decision to act is also distorted: the cost of refusing carriage is private, immediate and exposed to litigation, whereas the benefit is dispersed among the passengers of future flights. The predictable result is under-deterrence.

2.3 The Economic Commission of the 42nd Session of the Assembly supported the development of complementary best practices that "reflect lessons learned, incorporate passenger perspectives and support practical implementation" (Assembly 42nd Session Economic Commission Report (Doc 10221, paragraph 26.43)). The perspective of the passengers who share an aircraft with a disruptive passenger is one of those perspectives, and it is the one most directly connected with the disruption scenarios that ATConf/7-WP/6 places at the centre of this agenda item.

3. THE BRAZILIAN EXPERIENCE: RESOLUTION No. 800/2026

3.1 Since 2022, the Brazilian Aeronautical Code has allowed carriers to refuse carriage to unruly passengers for up to twelve months and has entrusted the civil aviation authority with the mandate to regulate the prevention and repression of such acts. In the absence of a procedure, the faculty remained unused. The prevailing practice was to rebook the disruptive passenger on the next flight, an outcome seen as lenient towards the conduct that had disrupted the journey of some 180 people and carried no deterrent effect. Criminal complaints depended on the personal initiative of the crew member affected, which produced structural under-reporting, and carriers feared civil liability for restricting access to the service, so that inaction was their safest course. Occurrences recorded by the Brazilian Airlines Association (ABEAR) rose from 1,059 in 2024 to 1,764 in 2025.

3.2 The National Civil Aviation Agency (ANAC) adopted Resolution No. 800 on 9 March 2026, after a regulatory process that included Public Consultation No. 09/2024, whose 607 contributions were answered individually, and more than thirty participation events, among them a simulation on board an aircraft with carriers and crew. Consumer protection bodies, crew unions, the bar association and the association of federal judges shaped the final text: the measure was renamed suspension of access to air transport, its duration was graduated, and the procedural safeguards described in paragraph 3.4 b) were added.

3.3 The regime has three tiers. Less serious acts are listed by way of example and give rise to immediate operational measures, such as guidance, containment and police involvement. Serious and very serious acts are listed exhaustively. A serious act leads the carrier to terminate the contract of carriage and exposes the passenger to an administrative fine imposed by ANAC, with a base amount of BRL 17,500, through a sanctioning process with full rights of defence. A very serious act, committed on board in flight, such as physical violence against a crew member, unauthorized access to the flight deck or tampering with safety equipment, additionally leads the carrier to suspend the passenger's access to scheduled domestic air transport for six or twelve months, according to whether the act prevented or hindered the normal performance of the service. The suspension is shared simultaneously among domestic carriers. Article 12 of the Resolution amended Resolution No. 400/2016, on the general conditions of carriage, which since 13 April 2026 requires the contract of carriage to state the rules applicable to unruly passengers and requires passengers to provide contact data for notifications.

3.4 Read from the standpoint of consumer protection, the Resolution operates through three channels:

a) Legal certainty and information. Because the conduct rules and their consequences must be stated in the contract of carriage, the passenger knows them before purchase, which is the stage at which the Core Principles place transparency. All carriers apply a single classification, which makes their responses comparable and their decisions reviewable, and occurrences are reported through a mandatory and categorized channel, which produces the first comparable data series on the subject in Brazil.

b) Protection of the passenger concerned. The closed list confines the most severe consequences to acts whose seriousness is not in dispute, and commercial conflicts are not meant to be treated under this regulation. The carrier must notify the passenger immediately in writing, with a description of the facts, the legal basis and the channels for complaint; answer the complaint within five days; remove the passenger from the list immediately if it revises its decision; and refund in full other tickets for flights that fall within the suspension period. Procedural failures by the carrier carry fines of up to BRL 35,000 per occurrence, and failure to maintain the sharing mechanism carries BRL 70,000 per month, amounts above the fine applicable to the passenger. The processing and sharing of personal data rest on specific legal bases under Brazil's General Data Protection Law,

with defined controller responsibilities and deletion at the end of the suspension. In its own assessment of each case, ANAC will examine whether the conflict originated in the carrier's own conduct.

c) Protection of co-passengers. Rebooking gives way to a predictable consequence, and the duty to report moves from the crew member to the carrier, with deadlines of immediate notice, five days or thirty days according to the seriousness of the act. The measures that operators adopt to preserve safety, order and dignity are shielded from administrative proceedings, within the limits of the Resolution, which removes the asymmetry that made inaction the carrier's safest course.

3.5 This reading follows the method of Resolution No. 400/2016 itself, which provides for general conditions of air transport and is commonly described as Brazil's passenger rights instrument. Its economic function is to define a standardized minimum core of the contract of carriage, identical across carriers, above which carriers compete and price optional services separately. A standardized core makes offers comparable, and comparability allows passenger choice to discipline the market, which corrects the information failure that arises when contractual attributes cannot be observed at the time of purchase.[1] The instrument acts ex ante, on the content of the contract and the information available to the passenger, and leaves compensation for harm to civil law and, in international carriage, to the *Convention for the Unification of Certain Rules for International Carriage by Air* (Montreal Convention of 1999).[2] It protects consumers by preserving their capacity to choose.[3] Resolution No. 800/2026 applies the same method to conduct: it standardizes, across carriers, which acts produce which consequences, and discloses them to the passenger before purchase.

4. CONDUCT AND DISRUPTION

4.1 The guidance manual issued by ANAC for the application of the Resolution identifies prolonged waiting without information as the first contributing factor to unruly behaviour. Delays, cancellations, gate changes and holding on the ground with passengers on board concentrate occurrences, and the decisive element is the absence of information about the wait more than the wait itself. The same manual concludes that prevention dominates sanction, because much of the conduct at issue arises from altered states or accumulated stress, in which the passenger does not weigh consequences.[4]

4.2 Two consequences follow for this agenda item. First, the duties of information and care during disruptions emphasized in ATConf/7-WP/6 and ATConf/7-WP/42 are also preventive measures against unruly behaviour, and their value to the resilience of the system extends beyond the passengers directly affected by the disruption. Second, a conduct regime without a filter for the carrier's own conduct would allow service failures to be recast as passenger misconduct. The scrutiny of the carrier's contributory conduct described in paragraph 3.4 b) are the safeguards Brazil adopted against that risk.

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[1] Leland, H. E. (1979), "Quacks, lemons, and licensing: a theory of minimum quality standards", Journal of Political Economy, 87(6), pp. 1328-1346.

[2] Shavell, S. (1984), "Liability for harm versus regulation of safety", Journal of Legal Studies, 13(2), pp. 357-374; Kolstad, C. D., Ulen, T. S. and Johnson, G. V. (1990), "Ex post liability for harm vs. ex ante safety regulation: substitutes or complements?", American Economic Review, 80(4), pp. 888-901.

[3] Schwartz, A. and Wilde, L. L. (1979), "Intervening in markets on the basis of imperfect information: a legal and economic analysis", University of Pennsylvania Law Review, 127(3), pp. 630-682.

[4] ANAC, Manual on the prevention and handling of unruly passengers (2026).

5. INTERNATIONAL DIMENSION

5.1 On board, the Resolution applies to scheduled domestic flights; on the ground, it covers the premises of Brazilian airports, including the areas that process international flights. Acts committed on board international flights remain governed by the *Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Tokyo Convention of 1963). The limitation is deliberate and consistent with Resolution A42-26, Appendix A, which urges States to avoid unilateral and extraterritorial measures that may affect the orderly development of international air transport.

5.2 The *Protocol to Amend the Convention on Offences and Certain Other Acts Committed on Board Aircraft* (Montreal Protocol of 2014), in force since 1 January 2020, extends jurisdiction over offences committed on board to the State of landing and to the State of the operator, and closes the gap that a domestic regime cannot close. Brazil supports its ratification and is pursuing it before the competent instances of the Brazilian Government, in line with Resolution A42-17, Appendix C.

5.3 Resolution No. 800/2026 requires ANAC to report on its application, effectiveness and results after two years in force. In line with Resolution A42-26, Appendix A, which urges States to keep the International Civil Aviation Organization (ICAO) informed of the experience gained in applying the Core Principles, Brazil will make that evaluation available to the Organization in due time.

6. CONCLUSION

6.1 Consumer protection in air transport has so far defined what passengers are owed. The service is consumed jointly, however, and the conduct of each passenger forms part of the quality of the service received by all others. Brazil's Resolution No. 800/2026 shows that rules on passenger conduct, when confined to acts of undisputed seriousness, disclosed before purchase and applied with procedural safeguards and scrutiny of the carrier's own conduct, protect co-passengers, protect the passenger concerned and reduce the litigation that ATConf/7-WP/6 seeks to avoid. Brazil invites the Conference to take this reciprocal dimension into account in the review of the Core Principles.

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