

Civil responsibility in air transport: a perspective after the update Rome 1952 international treaty

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ABSTRACT

This paper analyzes the civil responsibility of air transport carriers in accordance with the "*Unification Convention Rules for International Air Transportation*". The matter of civil responsibility is a complicated and conflicting theme for analysis due to the difficulty even greater to the additional problem of having to define responsibilities when a disaster of great proportions takes place. Contrary to other modes of transportation, in the case of air transport there is rarely partial damage (when an accident occurs), therefore it is important to remember that in an aeronautical accident, the damages (or sinister) are not partial, they are total. On the other hand, should be considered that the airline industry is global, in which parts of a whole can come from distant countries involving partners from different countries with different realities and legal liability. The existence of joint responsibility of partners involved in the airline industry is what is meant to identify with this article.

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1. INTRODUCTION

The aim of this text is to analyze the civil responsibility of air transport carriers in accordance with the “Unification Convention Rules for International Air Transportation” (celebrated in Montreal on 28th May 1999). The text will also consider problems related to two judicial systems, *i.e.*, **Civil Law** and **Common Law** (and their different interpretations in applying such rules to a specific existing case).

The matter of civil responsibility is a complicated and conflicting theme for analysis (this is the case for lawyers all around the world – no matter their legal system). In the specific case of air transport, the difficulty is even greater due to the additional problem of having to define responsibilities when a disaster of great proportions takes place. Contrary to other modes of transportation, in the case of air transport there is rarely *partial damage* (when an accident occurs), therefore it is important to remember that in an aeronautical accident, the damages (or sinister) are not *partial*, they are *total*. This is the case not only in the case of passengers or cargo being transported, but also in relation to third parties (with which the air company have no contractual or legal relation at all).

Nowadays a series of “actors” are present in the air transportation equation. This includes people and also cargo. It is also true that an aircraft is not a product of only one manufacturer – there are several suppliers and several organizations responsible for aircrafts as “final products”. Because of the complex nature of aircraft manufacture, in the event of an accident, how can it be considered that only one of the many “actors” involved is responsible for the accident?

Imagine that a specific equipment of a certain aircraft is defected. Can only the manufacturer be blamed for that specific equipment? Should also the company that assembled the entire aircraft be blamed for that? What about the flight company (operating the aircraft) should it be blamed? Should the air traffic control or the company operating the nearest airport be

responsible? Should the aircraft maintenance team or the pilot and his crew be blamed? There are many pressing questions.

The year 2007 was particularly chaotic regarding Brazilian air traffic. Many problems with flight control and two major accidents were responsible for many deaths (more than 300 during that specific year). The paper will attempt to analyze how the families of the victims could undertake judicial demands, considering the accident which occurred in the city of São Paulo (Brazil).

Some main questions to be answered include: Can the contractual relationships between victims and air transportation companies (the carriers) be identified as a consumption relation? In the case of family members of the victims: would they be forensically legitimate in order to receive any type of compensation (patrimonial or moral)? Could the compensation be greater than what was established by the Montreal Treaty?

Considerations are now made in order to identify how can be characterized the responsibility, what should be the "size" (or amount) of compensation or indemnification? Moreover, it should be also demonstrated that the *Lex Aquilia* in Rome presented as indemnification criteria relating to the proportionality principle (therefore not considering fixed compensations). Accepting this mode of action, this brings to the consideration of applying Roman law to contemporary cases. It is also important to clarify that "responsibility", as it is studied nowadays, is based on Aristotle's work "Nicomachean Ethics".

2. CIVIL RESPONSIBILITY - CONSIDERATIONS REGARDING THE "ESTAGIRA" MASTER AND THE LEX AQUILIA

Aristotle was born in Estagira in 384 A.C.; his father, Nicomaco, was a medical doctor and King Amintas II's friend (Alexander the great's grandfather). After having been a member of Plato's Academy for 20 years (and with Plato's death), Nicomaco decided not to participate in The Academy and was made preceptor of Filipe's son (in 343 A.C.). After Filipe's death in 336 A.C., and the rise to power of Alexander to his father's throne, Aristotle returned to Athens and created the Lyceum (Florido, 2000, pp. 7,8,29).

There is no doubt that Western thought was mainly developed by Greek Philosophy. Aristotle started the efforts in favor of the ethical investigation of the causes of human existence. Among his various works it can be observed that his "Book V" on Ethics marks the origin of several forms of reparation of illicit acts committed by unjust man.

Aristotle, in his *Book V on Ethics*, considering several forms of justice, made the case for diverse forms of reparation: not only in terms of Civil, but also in terms of Criminal law. The "Estagirita" classification dealt with voluntary and involuntary transactions. The voluntary transactions are of Civil nature, while the involuntary are Criminal (they were considered under a type of justice called "Particular"). For Aristotle, as laws considered people or opposing parts as equals, if someone was unjustly affected, it was the work of the Judge to re-establish equality (understanding that):

... the law considers only the distinctive character of the misdemeanor and considers parts as equals, asking only if one side committed and the other part suffered some injustice. If one is the author and the other is a victim of misdemeanor. Being this type of injustice an inequality, the Judge will then try to re-establish equality³

When presenting the so called *corrective justice*, Aristotle demonstrated that this form of justice is the "average justice" (or a half way) between losses and gains, making use of proportionality principles, as it can be taken from:

*Equality is the average or half way between the upper part and lower part of any arithmetic proportion; this is the origin of the term **dikaion** (just); because we are dealing with two similar parts (**dikha**), understood as **dikaion**; and a **dikastés** (Judge) is the person who divides parts in halves (**dikhastés**).⁴*

Aristotle however, recognized the existence of two forms of justice when considering political justice. The "Estagirita" considers a justice "by nature" and another "by convention"; considering remission to licit and illicit acts. As the acts are practiced involuntarily, the author

3 ARISTOTLE. **Nicomachean Ethics**. Brazilian version: São Paulo: Martin Claret. p. 110.

4 ARISTOTLE. Opus cit., p. 111.

does not act in a just or unjust manner. Aristotle considered as well that what determines justice or injustice of acts is its voluntary or involuntary character ⁵.

2.1 OF ROMAN LAW – LAW OF THE XII TABLES – *LEX AQUILIA*

The Law of the XII Tablets, part of the judicial Roman system, was written by “*Decenviros*” and adopted in Rome between the years of 303 and 304 B.C.; it dealt with reparations of offence and misdemeanor (wrongdoing, breaking or violation of laws) suffered by victims of these crimes or injurious actions. Item 2 of this Tablet considered: ***Si injuria rupitias... (ast si casu) sarcito*** (If someone causes a premeditated injury, this same person should repair it). Item 7 of Tablet VII considered that fire should be thrown at those who had set fire to a house or to a wheat plantation near a house. The following item (Item 8) of this Tablet considered penalties (in the case of non-intentionality) such as: ***Ast si casu, noxiam sarcito: si nec idoneus escit, levius castigator***. (If acting without prudence, the person should repair damages; if the person have no means and resources for reparation, this person should be punished less severely than if he or she had acted intentionally, Autuori, 1965, p.45).

Later in time (considering Roman law), occurred the transference of corporal to patrimonial responsibility with the ***Lex Aquilia*** which considers punishment illicit acts establishing a link of causality between the procedures of the author of the fact and the respective damaging effect. It must also be observed that not only there was an end for physical punishments – this new legal instrument also inaugurates the principle of proportionality (ending in this way with fixed indemnification and therefore amplifying the anti-judicial field).

Moraes (2002) quotes in his work “Roma Antiga e o seu Direito” (*Ancient Rome and its Laws*) concerning the responsibility under the Roman point of view, after the (already cited) ***Lex Aquilia***:

In what respects the imputation of RESPONSIBILITES it must be emphasized that one which is a consequence of mere procedure not in accordance or contrary to friendly relationship, and, therefore, repugnant to Law studies, object for detailed considerations in

⁵ ARISTOTLE. Opus cit. p.118.

the *tria capita* (three chapters) of the **Lex Aquilia**, which from now onwards sanctions the **danum injuria datum**, the causality nexus linking the procedure of the author to its respective damaging effect.

Another innovation brought about by **Lex Aquilia** for Law studies and legal practice (into the Roman Law – which is supervenient up to our days), was the idea of guilt as a tributary to the practice of illicit acts and of many forms of reparation. For the Romans, after all, and also for the ancient people in a more general way, the “size” of the damage was not a main issue – as whatever the “size”, the indemnification would be always the same (and when the author of the illicit act had not enough resources to deal with required reparations, he would respond physically).

Moraes (2002), when considering Pretorian obligations, brings us to consider the existing difficulties among “Romanists” in order to identify the origins of obligations before the advent of **Lex Aquilia**:

The partition by four of Classic Law (referring to the origins of obligations), have in the “obligations resulting from the quasi-misdemeanor” source of uncertainties and complicated terrain, dissenting area for Romanists. In the past, some tried to differentiate these laws from those “ex delicto” on the basis of dolo present on these, and, from simple culpa in “ex quase delicto” – idea which was abandoned with emerging evidence contemplated by LEX AQUILIA, from types of simple guilt. (Moraes, 2002, p.283).

In order to better clarify these issues, it is important to note that the obligation, according to German theories, is dual, *i.e.*, when closely observed an obligation, it is possible to verify that it is composed of debt and also responsibility. Although the existence of obligations without one of the elements quoted above is possible, it is with both elements that the obligation can be judicially ordered. If responsibility is a consequence of the obligation however, this is also a consequence of law, of contract, of quasi-contract, of misdemeanor, of quasi-misdemeanor; the quasi-misdemeanor being considered as an illicit of Civil nature and the misdemeanor as an illicit of Criminal nature. Therefore, while the responsibility is a consequence of the obligation, there are many sources for the obligations.

It is possible to identify through the Romanist text cited above, the extent of changes which were introduced when dealing with reparation of wrongdoings (or any deleterious actions), caused both voluntarily and involuntarily by someone, with the advent of the **Lex**. Nowadays, one talks of "Aquilian" responsibility when this is extra-contractual.

3. THE FAMILIES OF *COMMON LAW* AND OF *CIVIL LAW*

The main differences (and similarities) and the new tendency when dealing with the two "*families*" of laws, will now be presented. The purpose here is to present the difficulties that are characteristic of both judicial systems; and also to make some considerations regarding international agreements such as the Montreal Treaty (when, for example, considerations are made in order to understand different forms of judging cases).

David (1993, p.16), in his work of *comparative law: "The Great Systems of Contemporary Law"*, when classifying the many judicial systems in "families", does this by showing their similarities (keeping aside – or to a secondary position – their differences).

According to David (1993, pp.16,17) by this way, the first family of Rights is the family of Roman-Germanic Law, of Continental Law or **civil law** - which have in its Codes its primary formal source. He presents this family as follows:

The first family of Rights – which deserves our attention – is the Roman-Germanic Law. This family groups together the countries in which the Science of Law formed itself based on Roman Law. The rules of law are conceived in these countries as rules of conduct, closely linked to ideas of Justice and of Moral. To determine which should be these rules is the essential task of Law Science; absorbed by this task, the "doctrine" is less interested in its application – which is the interest for practitioners: lawyers and administrators. From the XIX century onwards, an important role was attributed, in the Romano-Germanic family, to the Law; several countries adopting these ideas produced many "Codes"(David, 1993,p.18).

The above author (op cit, p.19) continues analyzing the "second family", informing that the Right of **common law** appears as a result of the analysis of a real-life case submitted to the jurisdiction of the Judge-State (as follows):

*A second family of law is that of **common law**, which comprises the Laws of England and the Rights resulting from the English legal system. The traditional characteristics of **common law** are very different from those of the Romano-Germanic family. The **common law** had its origins with Judges, who had to solve private litigation, and today still keeps this unequivocal “problem-solving” characteristic. The rule of law of **common law**, less abstract than the rule of law of the Romano-Germanic family, comprises of a typology which is meant to provide solutions to a specific process, and not to formulate a “general rule” of conduct for the future.*

As already considered, however, there is an effort by Justice staff (who operate in both types of families), to enhance the similarities amongst these families in such ways that it is possible to consider, mainly the international treaties, with similar interpretations and actions – avoiding situations which could bring about double standards and different legal interpretations. This can be seen when reading the papers published during the “International Congress of Castel Gandolfo” (in Italy), January 2004. Reading, for example, Maria Giovanna Rigatelli, it can be seen that:

The preparation of the Congress: “Law Relations: do we have space for fraternity?” was marked by some interesting moments (in January 2004, Italy), where around fifty individuals from several countries and diverse legal cultures, hoping to find, together, some words of wisdom in order to bring more unity and understanding regarding legal studies and practices. (David, 1993, p.19).

The same specialist (*op cit*) continues her comments by highlighting the existing differences between the two main legal systems of Western world. The main conclusion is that the differences should not be the focus of attention; efforts must be directed towards finding common grounds for understanding and applying laws.

*It has been observed that, for a long time, **civil law** and **common law** were seen opposing each other. During the past twenty or thirty years however, their common roots were discovered – resulting from studies of High Middle Ages Law, which originated in Europe between the fall of the Roman Empire and the XI century.*

(...)

*Today, in those countries using **civil law**, the norm is not seen as unique (as the only source for Law), and jurisprudence is acknowledged as having greater importance.*

*On the contrary, in those countries of **common law**, there is more space for legislation. (op.cit., p.17)*

As it can be seen, there is a tendency (by part of those operating within a diverse range of countries), to search for “converging points” (reaching agreements, dissipating differences). By doing so, there will be greater scope for a better judicial system, observing principles of equality and universality of rights.

Considering the “Warsaw System” and also the “Montreal Treaty”, the Montreal meeting brought about solutions to the severe fragmentation originated with the Warsaw system. It is possible today to try to avoid some legal insecurities – and this is a result of efforts towards bringing together different legal systems and families (solving problems of both: Continental Law and **Common Law**).

Having said that, some observations are presented by Donato (2006) (CLAC Secretary General; using material published in the “*Revista Brasileira de Direito Aeronáutico e Espacial*” / “*Brazilian Journal of Aeronautical and Space Law*”):

It is possible to say that we are dealing with an imperfect Agreement, a product of many efforts towards amalgamating diverse positions of Continental Law and of “Common Law” – in order to formulate a series of observations arising from the specific technical-legal conditions. Critics can point to the problems caused by the integration of the Warsaw System – Warsaw agreement of 1929, The Hague Additional Protocol of 1955, Guadalajara agreement of 1961, Guatemala Protocol of 1971, and Protocols 1, 2, 3 and 4 of Montreal, 1975. An alternative solution was reached (considering this fragmented framework just quoted – and its legal uncertainties), when the new Montreal agreement was produced in 1999, which not only substitutes different legal jurisdictions, but produces a unified system, introducing many modern elements to deal with international air transportation for passengers and cargo (Donato, 2006).

It is important to remind the reader that the integration of many different legal instruments in (only) one system, demonstrates that the Warsaw agreement of 1929 could no longer exist because of many changes in technology: not only regarding aircraft manufacture, but also because of modernization in communication and air traffic control.

As changes which occurred throughout the world are fantastic and of far-reaching consequences (mainly after 1975), the main "instrument" for controlling air transportation could not stay stagnated⁶ and fragmented (this including countries "non-aligned" with *commom law* or *civil law*).

4. CONTEMPORARY CIVIL RESPONSIBILITY, AND THE 1999 MONTREAL TREATY

One of the most common problems presented by the Warsaw Pact was that regarding the indemnification limitations by part of air transport companies (be it for cargo or passenger transportation). Notwithstanding the changes made with the advent of the Montreal Treaty, the indemnification limitation still subsist.

This paper presents a case-study involving an aircraft accident of national transport nature (not international)⁷. Even, *mutatis mutandi*, it is understood that this will not modify the objectives intended to be pursued. In order to better present ideas regarding civil responsibilities, it is necessary to present a brief synthesis of the evolution of responsibilities under a judicial point of view.

6 The first part of the Convention must be read, in order to understand how this modernization works as a signaling system for those participant countries: "Recognizing the need to modernize and put together the Warsaw Convention and related instruments. Recognizing the importance of safeguarding the protection of interests of users of international air transportation, and also, the need for an equitable indemnification, based on the principle of restitution. (Decree n.º 5.910, of 27 September 2006, promulgated as a consequence of the Convention for the Unification of Certain Rules Relative to International Air Transportation, celebrated in Montreal: 28th May 1999).

7 In accordance to the Montreal Convention, following directions of Item 2 (beginning of Article 1), international air transportation is considered that which the point of departure, of arrival or of connection occurs in different countries.

In the past, what prevailed in the sphere of Public Law was the “theory of irresponsibility”, based on the English legal principle of *the king does no wrong*. Later in time came a “theory of subjective responsibility”. Nowadays there is the “objective responsibility”, and also responsibilities based on administrative risk and responsibilities based on integral (total) risk, and also social responsibility. At present some Western legal organizations use all the theories quoted in a “techno-systematic” fashion.

Our attention will be focused in analyzing the subjective and objective responsibilities, and by which manner the enforcement of any of these responsibilities may influence judicial demands – considering contractual and also extra-contractual relations. In order to state this matter clearly, a tangible example is presented as follows: when a person takes a bus it has as an objective to occupy a determined place. When this person pays for the journey, and enters the vehicle, the passenger made a contract with the transportation company (even if nothing was objectively written and no “specific” contract was celebrated). In the event of an accident, and if the passenger suffers some kind of damage to his physical condition, there will be responsibility on the part of the bus company (of contractual nature).

If in this accident, however, a pedestrian is harmed, suffering some type of damage, the responsibility of the company is of extra-contractual nature. This is the case because the company has no judicial relation with the pedestrian (now victim); not considering damages resulting from the misdemeanor or quasi-misdemeanor, in accordance to the nature and extension of the damage which resulted.

When considering objective and subjective responsibilities, the main point to consider is the matter of guilt. In the case where responsibility is objective it is enough for the person harmed to prove his damage, the causality connection (in other words: the relation of cause and effect). However, if the responsibility is subjective, the affected person will also have to prove the guilt of the part which (supposedly) caused any type of harm or misdemeanor.

It can be seen that the subjective responsibility presents for the person affected (harmed) a greater degree of difficulty. This happens because the person will have to present valid proof to

convince the Judge that it was "that agent" who was responsible for any damage caused to the individual (who performed the illicit act).

At this point, the responsibility presented in the Montreal Treaty is of an objective nature – in accordance to Item 1 and Article 17; and of a subjective nature (regarding damages, loss, or destruction of luggage) – as can be seen by reading Item 2 of Article 17 of the Treaty (the final part of the Treaty).

If the "Brazilian Consumer Defense Code" (*Código de Defesa do Consumidor Brasileiro*) is considered this follows the tendencies of similar codes from the European Community (such as the Italian or the Portuguese Consumer Defense Codes), and all the responsibilities are objective. As the consumer is considered as a final addressee of the productive chain, this places the consumer in an unequal judicial condition in relation to the supplier, to the entrepreneur, to the manufacturer, and to the importing corporation.

Seen by this perspective, air transportation, such as any form of public transport (in the Brazilian case) is a public service, which is offered to consumers via public contract or through permission or concession, and, under these conditions it is applied a rule present in the Brazilian Constitution in its §6º of Article 37, which considers that if a person suffers some type of misdemeanor or damage from any public service provider, it is enough to prove damage or wrongdoing and its causal connection.

Therefore, when considering the Brazilian legal system, regarding the judicial relation between transporter and passenger as a consumption relation (and even if this was not the case), the public services rule (and also for passengers) would be applied in the event of any damage to its physical conditions (or to luggage). It would be enough to prove the damage and the causal connection – without having to prove the guilt of the transportation company.

The following considerations are non-removable when the responsibility is objective (both, under the Consumer Defense Code and the Brazilian Constitution): the first refers to the fact that not always the passenger himself will search for his rights (as in the case of air transportation damages are most likely followed by death and total loss). In the case of

luggage, the situation is different, as the Montreal Treaty considers that in the advent of destruction, loss or damage, the registered luggage is subjective – because it depends on proving the guilt of the transportation company (or of its responsible people), in accordance to the final part of Item 2 of Article 17 of the Treaty.

In the case of transportation and fortuitous damage of cargo, the rule of Article 18 of the Montreal Treaty is applicable. This means that the transportation company proving any of the hypothesis cited in topics a, b, c and d, of Item 2 of Article 18.

4.1 LIMITATION:

The Treaty limited the indemnification for damages for the physical integrity of passengers to a value not greater than 100.000 "*Withdrawal Special Rights*". This monetary unit will be converted under the evaluation of the International Monetary Fund (IMF).

This limitation is directly related to the economic viability of international commercial aviation. In other words, it is not applicable what was applicable in Rome: the *restitutio in integro*. It is evident that nothing should be greater, for example, than the loss of human life. However, what justifies maintaining the limitation for indemnification? This limitation can not be considered today as restrictive to the development of air transportation enterprises. Exception is made in the cases of terrorism – as was the case in many cases worldwide.

There is no doubt, however, that the increase of passenger flow around the world, and also the growth of cargo transportation, enhances (considerably) the problems of congested airports in many countries. This may as well be a contributing factor for more accidents. However, this should not be a reason for maintaining limitations for indemnification – as determines the Montreal Treaty (to a certain extent repeating some ideas presented in the Warsaw agreement).

It is certain that each case will be considered by the Judiciary in each country (member and signatory of the Treaty). The matter may be considered under the view point of Legal Hermeneutics, or even in accordance with the tendencies of the Tribunals of each country. It is

necessary to understand that the setting up of some points of convergence (some type of agreement) must be put in place in order to allow for the possibility of applying the principle of equality and of universality of rights (no matter the judicial family of the countries involved).

5. SYMPATHETIC RESPONSIBILITY BETWEEN THE MANY ACTORS WHICH WORK DIRECTLY OR INDIRECTLY WITH AIR TRANSPORTATION

Another matter which is relevant for researching civil responsibility is that relating to solidarity. It is well-known that in Legal activities, solidarity is not presumed (but is a consequence of the Law or of the will of the parts involved in legal cases).

In day-to-day legal practice, solidarity represents an opportunity for the creditor or the damaged part to promote judicial demands over those who may, effectively, satisfy its credits or those who are able to take on condemnation when it is the case. In the case of air transportation, not only because there are many other actors involved, but also because of the fact that modernization reduced (or at least minimized) entrepreneurial risks – sharing responsibilities.

It must be also considered that aircraft supplying companies also share responsibilities using the *leasing* system. This makes business more attractive and favors air transportation activities (commercially speaking). This is also the view point of José Pedro Polack Varela (see article “Aeronautical Insurance Contract Perspectives”, in number 1794, March 2007, of the periodical found on the web-site of SBDA):

The basic elements for air transportation are those belonging to the following actors: aircrafts, infrastructure and navegation systems, aeronautical personel and passengers of cargo which must be carried.

(...)

Without the backing of a system of division, distribution or transfer of risks, which avoids that the great impact of an accident may affect solely one actor, it is very complicated to work safely.

(...)

The insurance contract is a contract which works as a great net of solidarity – making it possible to spread any potencial risks.

(...)

The risks and the corresponding Premium will be the result of studying two main factors:

The accounting conditions, and

The recovery possibilities. (Varela, 2008)

As it can be observed, beyond the existence of other actors (in order to share eventual responsibilities), the transporter will also be obliged to hire and provide insurance. This works, as it can be seen, as a large solidarity net (making it possible to spread and share risks). This also brings a little more judicial safety to passengers. After all, even in the event of the bankruptcy of the transporting company, there are still chances for receiving indemnification (even if this could take more time to occur).

However, the matter is much more widespread. Besides the transportation company, there are also many others actors involved in air transportation such as: air traffic control, airport administrations, and also many suppliers of aircraft manufacturers. Furthermore, the constructor of an aircraft is a consumer of many inputs. An aircraft manufacturer may well be an assembling company – searching for its parts from several countries around the world.

Taking a specific accident as a case-study, and after specialist analysis (by technical investigation), it is almost certain that solidarity can be brought into the equation – among the diverse range of actors. This may neutralize the indemnification limitation, imposed by the Montreal Treaty. It may also affect (making it more complicated) that the hindered person (or his family member) is able to promote any demand targeting any of the actors involved considering the entire air transportation operation.

6. THE WHAT, HOW, WHEN AND WHERE QUESTIONS:

It is possible to understand that the final addressee of air transportation, or even the third-party which presents no judicial relation to the air transportation carrier, it should have the opportunity to choose what, how, and when ... and even where.

6.1. WHAT: Considers the choices that the victims (or their families) have regarding the type of legal action they will undertake. Important considerations here are those of contractual and extra-contractual responsibilities.

6.2. HOW: To produce the analysis of the diverse possibilities and of the variables which are a consequence of solidarity, it is always important to seek for the best interests of those who were victims of accidents or misdemeanor.

6.3. WHEN: The search for immediate reparation, even if there are not enough elements in hand to pursue legal demands (even in those cases related to objective responsibilities).

6.4. WHERE: Valuing solidarity, it is possible to advocate the case in more than one country (this being possible when the actors who caused the misdemeanor are not restricted to only one country).

7. CONCLUSIONS AND CLOSING REMARKS

The aim of the present text was to shed light and promote some reflections regarding the matter of solidarity in civil responsibilities relating to the air transportation sector. It was dealt here with a tragic and extreme situation of the air chaos as it occurred in Brazil in 2007. However, this type of research is also useful in cases where passengers suffer some type of disruption, and it is not always clear the main responsibilities of air transportation companies.

As mentioned previously, there are many actors in the air transportation sector. Technological development and the many forms for financing air transportation companies are increasing the complexity of these actors. As airplanes are increasingly building up mass transportation systems, there will be greater problems with air traffic congestion and increased possibilities for system failure.

To the consumer, addressee and important link of the consumption chain, there are still problems regarding the weaknesses of this "link" (it must be considered the negative and not expected results). The consumer, understanding his weakness and its importance, should pursue more knowledge related to the "what", "how", "when" and "where" questions in order to try to repair wrongdoings or misdemeanor caused by air transportation companies. And, of course, valuing the proportionality principle of the "Lex Aquilia", and also the reasonability principle, removing the limitations imposed by the Montreal Treaty.

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