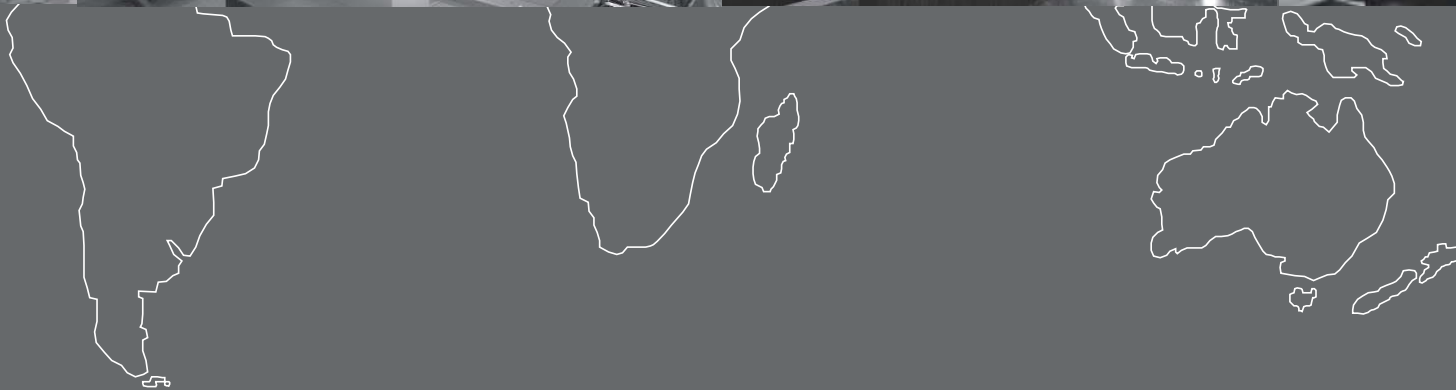


Aviation Regulation:

How to Ensure Adherence to Global Best Practices to Make the Americas More Competitive



Two Sorts of Problems to be Resolved:

- Regulations Inconsistent with ICAO Consumer Protection Principles

- How Courts Interpret Regulations



The Problem

Countries in the Region

Dominican Republic

Project of law: Increase compensation requirements for flights delays and cancelations, that include a refund for a percentage of the ticket price that would depend on the number of delay hours involved as well as Baggage damages and delays compensation requirements that exceed Montreal Convention limits.

Peru

Project of Law: To establish automatic compensation requirements for passengers in the case of flight delays and cancellations, conflicting with MC99

Ecuador

Project of law: To establish preferential pricing for a specific age group - the bill establishes a 25% reduction for air transport fares for all passengers from 18 to 29 years of age

Colombia

Project of law: To require airlines to establish insurance policies to guarantee that passengers will receive the services acquired or a refund in the case of an airline's insolvency (applicable to all tickets).

Argentina

Project of law – to impose fare bands establishing price ceilings and floors applicable to all domestic flights in the country and Court´s interpretation – not enforcing the MC 99.

The Problem

Brazil: Court's interpretations

Refusal to apply the 1999 Montreal Convention – even after the decision from the Supreme Court – Tema 210.

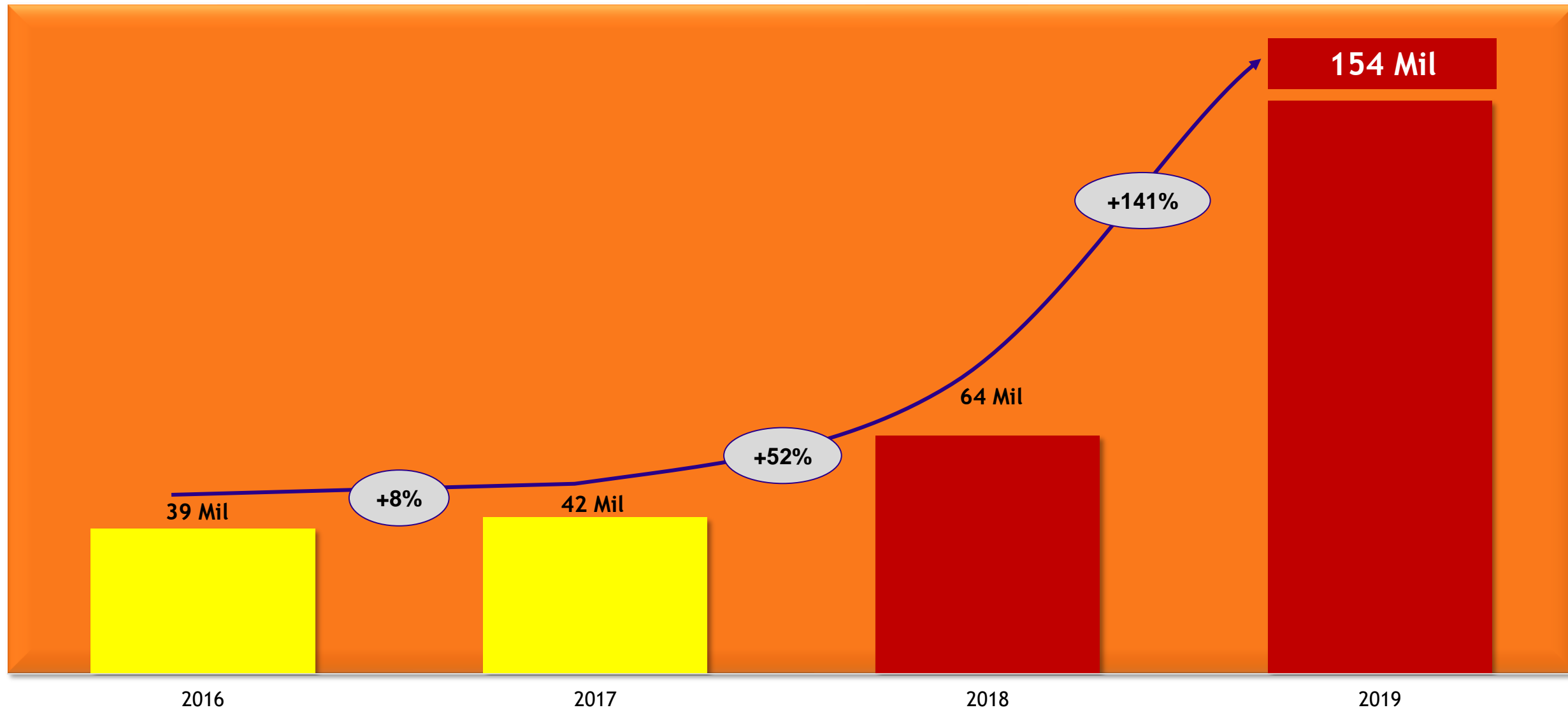
Presumed moral damage (“in re ipsa”) and with punitive or pedagogical effect – in events of flight delays or cancellations, even if caused by force majeure / aviation safety, in addition to problems with baggage.

Result: Unprecedented Growth of judicialization.



Increase on Volume of Litigation in Brazil

Statistics – Domestic Air Carriage



Comparison Brazil vs. USA

Overview – United States

2017



4.021.779
Flights



397.754.000
Passengers



353
Lawsuits



1 Lawsuit
For every 1.126.780 Passengers

2018



4.180.050
Flights



413.407.000
Passengers



368
Lawsuits



1 Lawsuit
For every 1.123.388 Passengers

2019



4.338.321
Flights



429.060.000
Passengers



342
Lawsuits



1 Lawsuit
For every 1.254.561 Passengers

Comparison Brazil vs. USA

Overview - Brazil

2017



7.263
Flights



2.757.432
Passengers



7.797
Lawsuits



1 Lawsuit
For every 353 Passengers

2018



7.300
Flights



2.800.698
Passengers



9.044
Lawsuits



1 Lawsuit
For every 309 Passengers

2019



5.913
Flights



2.549.978
Passengers



11.225
Lawsuits



1 Lawsuit
For every 227 Passengers

Comparison Brazil vs. USA

Statistics Summary

Brasil	2017	2018	2019
Number of flights	7.263	7.300	5.913
Passengers transported	2.757.432	2.800.698	2.549.978
Number of lawsuits filed	7.797	9.044	11.225
% of lawsuits filed per flight operated	1 lawsuit for each 1,07 flights	1 lawsuit for each 1,2 flights	1 lawsuit for each 1,8 flights
% of lawsuits filed per passenger transported	1 lawsuit for each 353 passengers	1 lawsuit for each 309 passengers	1 lawsuit for each 227 passengers
Estados Unidos	2017	2018	2019
Number of flights	4.021.779	4.180.050	4.338.321*
Passengers transported	397.754.000	413.407.000	429.060.000*
Number of lawsuits filed	353	368	342*
% of lawsuits filed per flight operated	1 lawsuit for each 11.393 flights	1 lawsuits for each 11.358 flights	1 lawsuit for each 12.685 flights
% of lawsuits filed per passenger transported	1 lawsuit for each 1.126.780 passengers	1 lawsuit for each 1.123.388 passengers	1 lawsuit for each 1.254.561 passengers

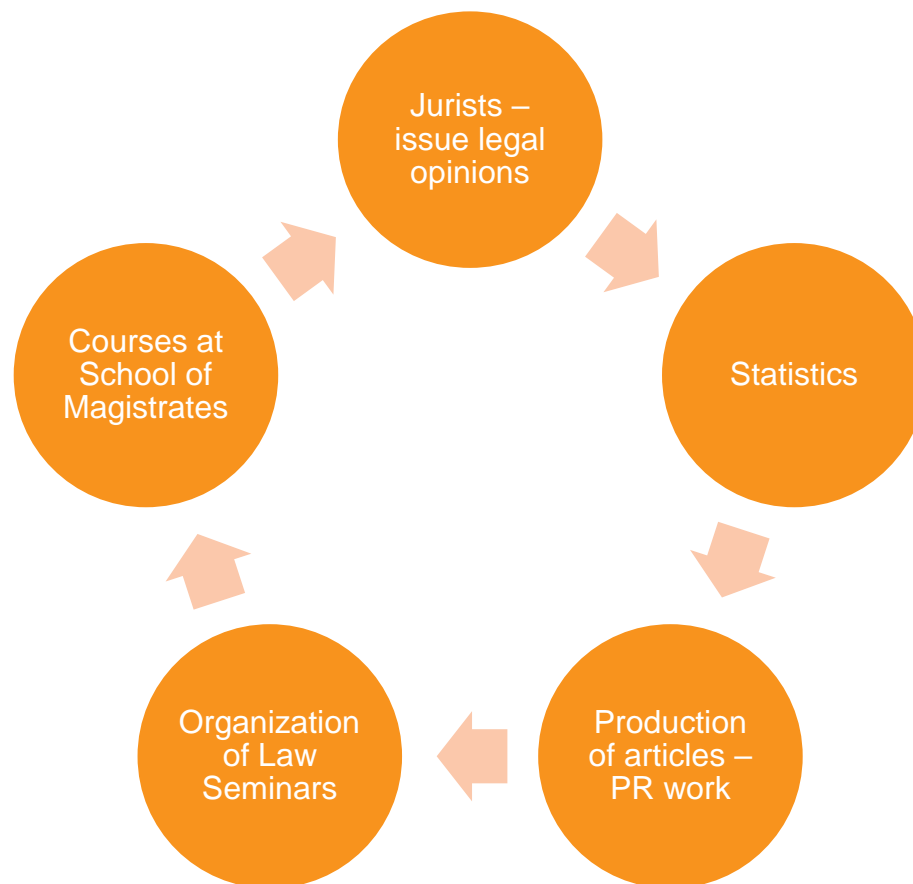
Liability Project – IATA, ALTA and Airline Associations: Objectives

Expand the effects of the Supreme Court ruling issued when Tema 210 was reviewed based on its own terms – which justify the validity of the Montreal Convention in its entirety.

Avoid awards for moral damages “in re ipsa” and with punitive purpose.



How to achieve objectives



Effects of the Judicialization



Barriers for the entry of new airlines - new airlines – would allow ticket sales at a lower cost.

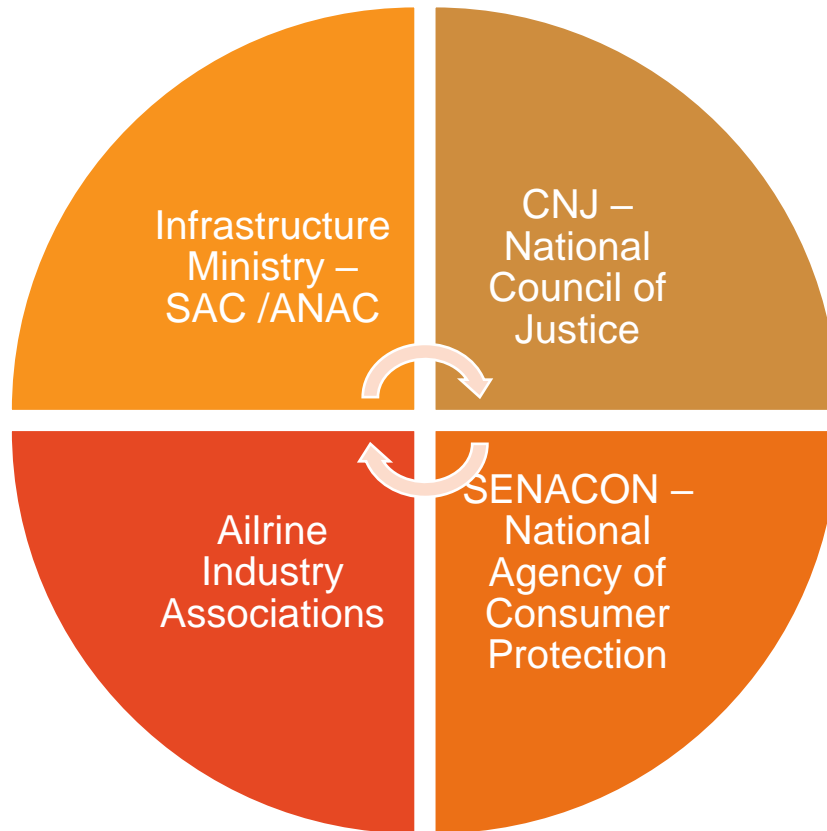


Increase of ticket fare - as a result of the need of transferring costs to the passenger.



Emergence of opportunist LawTechs (websites) that foster litigation – Moral damages as a “judicial commodity”

Joint Efforts – Public and Private Sectors



Liability Project – Airline Associations

Key Result - Law 14.034/20.



- Indemnification for extra-patrimonial damage (moral damage is included within the concept of extra-patrimonial damage) caused by flaws associated with air carriage services will be subject to evidence of damage and its significance, to be produced by the passenger as well as cargo shipper or consignee. Thus, the law will prohibit compensation for presumed (*in re ipsa*) moral damage.

Liability Project – Airline Associations

Key Result - Law 14.034/20.

Airlines will not be held liable for flight delays if it presents evidences that, for causes beyond its control, it was impossible to adopt the necessary and sufficient measure to avoid the damage.

- landing or takeoff restrictions imposed by air traffic control authorities resulting from meteorological adverse conditions;
- landing or takeoff restrictions resulting from lack of airport infrastructure;
- restrictions for flights, landing and takeoffs determined by civil aviation authorities or other governmental authority; and,
- declaration of pandemic status or publication of rulings resulting therefrom, aiming at prohibiting or restricting air carriage services or airport operations.



Liability Project Important Results - Precedents

Supreme
Court
ruling – AF
& AC
cases –
Tema 210

Art. 19 of the
Montreal
Convention
enforced.

Art. 22 of the
Montreal
Convention
enforced.

Art. 35 of
the Montreal
Convention
2-Years
statutes of
limitation
must apply
to both,
property and
moral
damage .

Compensation for
moral damages in
flight delay or
cancellations
cannot be “in re
ipsa” .

Compensation for
moral damages in
baggage
loss/delay cannot
be “in re ipsa” .

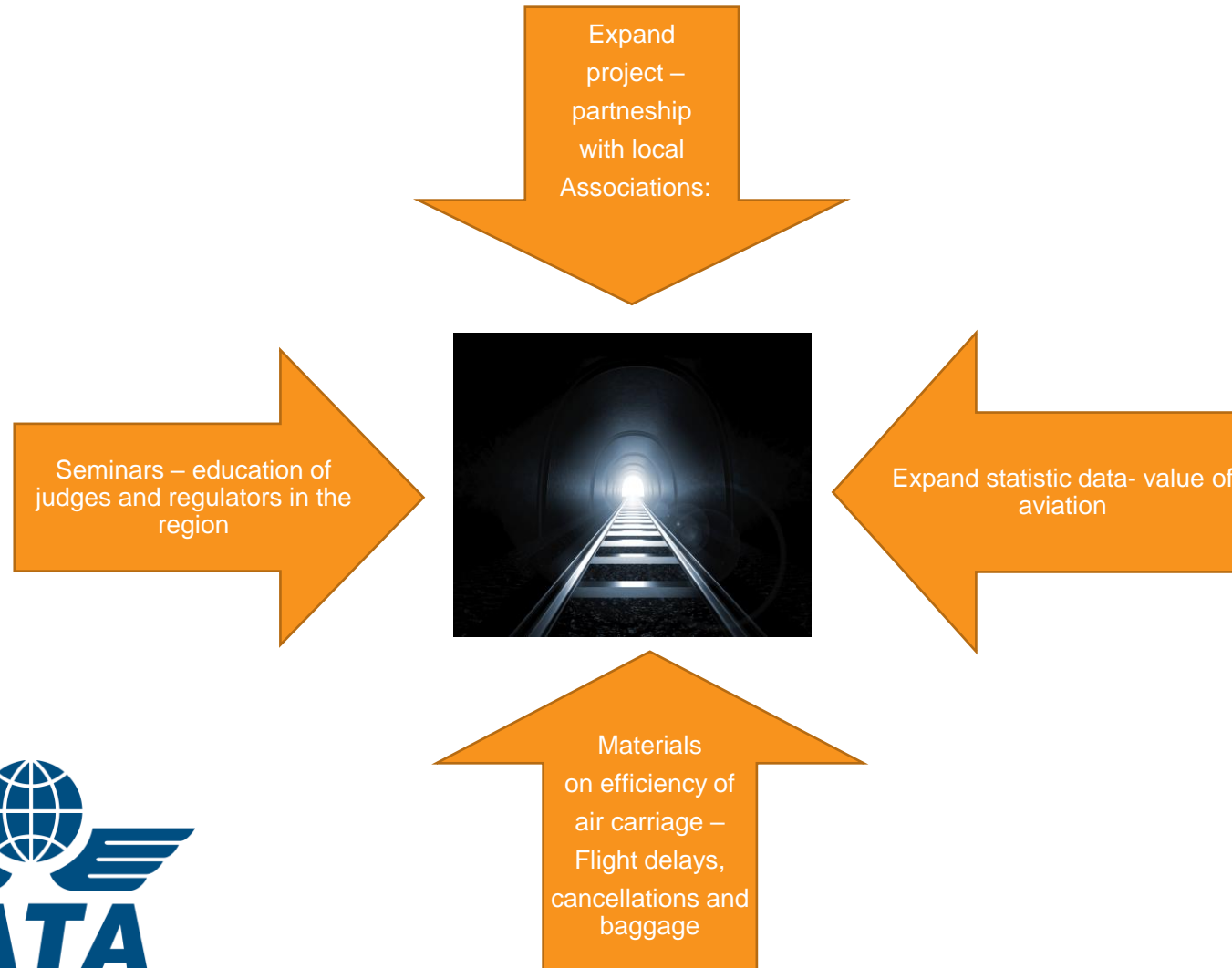
Airlines
exempted
from liability
in force
majeure
situations –
wheather/A
TC,
especially if
assitance
has been
provided at
airports.

Lawsuits filed by
“Claims
Management
Companies”
dismissed for
irregular
representation.



Liability Project

Next Steps



Bernardi & Schnapp

ADVOGADOS

Thank you

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