

# Towards Better Passenger Rights in ASEAN

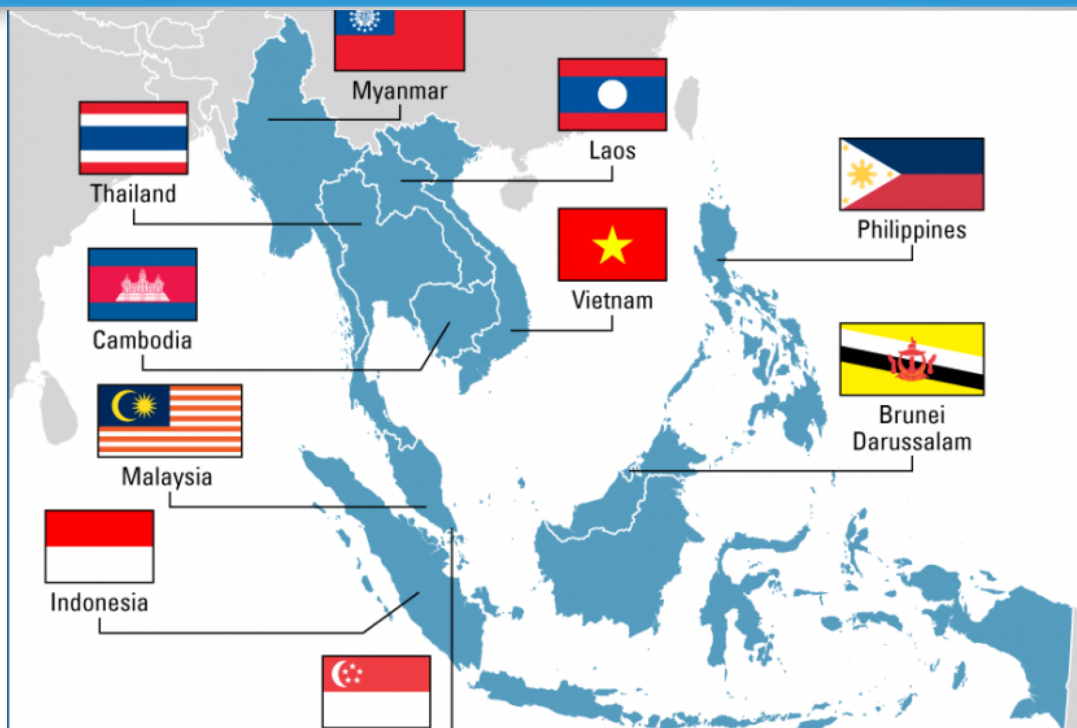
Ridha Aditya Nugraha, Air Law Expert

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## Who Are We?



Source: <https://www.impresamia.com/internazionalizzazione-asean-octagona-corso-executive-su-singapore-vietnam-e-indonesia-organizzato-collaborazione-con-nibi/>



## Brief About ASEAN

- ASEAN Charter (15 December 2008)
  - regional initiative > international organization
- the ASEAN Way
  - non-interference principle
- the absence of supremacy ASEAN Law
  - no hard laws > soft laws

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Source: <https://taketheleaptravel.files.wordpress.com/2015/07/many-airplanes-flying-together-amazing.jpg>

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## Towards Better Passenger Rights in ASEAN

### ➤ ASEAN Open Skies

- intra-ASEAN flights will continue to increase rapidly
- more aircraft deliveries → more passengers

### ➤ the intra-ASEAN flights

- market capitalization
- increasing competition among airlines
- urgency to establish equilibrium between commercial and passengers' rights



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### ➤ Speaking of passengers' rights

- favour of consumers
- ...but do not forget airlines' interest as well



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The Warsaw Regime	The Montreal Regime
Brunei Darussalam	Indonesia
Cambodia	Malaysia
Lao PDR	Singapore
Myanmar	The Philippines
	Thailand
	Vietnam



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	EU Regulation No. 261	The Warsaw / Montreal Regime	ASEAN
<b>Nature</b>	Public nature	Private nature	n/a
<b>Type of damage</b>	Standardized damage	Individual damage	n/a
<b>Protection</b>	Pre-flight remedy	Post-flight remedy	n/a



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- flight disruptions
  - flight delays
  - flight cancellations
- denied boarding
  - *Osman Erdem v. Germanair (1971)*
  - *King v. American Airlines (2002)*
  - *Paradis vs Ghana Airways (2004)*



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- *force majeure* is still the exception, however, in EU its scope is being further explored through several court decisions:
  - *McDonagh v. Ryanair* in 2013 (on extraordinary circumstances and right to care)
  - *van der Lans v. KLM* in 2015 (on extraordinary circumstances)
  - *Sturgeon* case in 2009 (long delay means flight cancellation; more than three hours)



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### ➤ *force majeure* in ASEAN



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## Towards Better Passenger Rights in ASEAN

➤ *force majeure* should be the exception for airlines to not grant compensation, but not to right to care.

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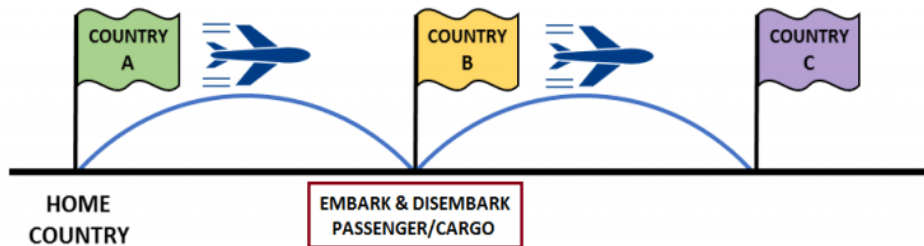
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## 5th Freedom



Source: <https://www.sametkasik.com.tr/wp-content/uploads/2017/09/5th-1024x514.png>

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Indonesia AirAsia + Jetstar  Partly operated by Jetstar Asia	14:10 CGK 6h 20 1 stop SIN 20:30 SGN	£86  Select → 2 bookings required Self-transfer
AirAsia	06:15 CGK 6h 40 1 stop KUL 12:55 SGN	2 deals from £88  Select →
Lion Air + Scoot	08:20 CGK 5h 50 1 stop SIN 14:10 SGN	1 deal £89  Select → Self-transfer
Lion Air + Scoot	11:15 CGK 6h 1 stop SIN 17:15 SGN	1 deal £89  Select → Self-transfer

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- Protocol 4 - ASEAN Co-Terminal Rights
  - 9 November 2018
- example: an ASEAN Low-Fare Airline
  - Vientiane → Medan → Bali (single ticket)
  - Bangkok → Medan → Bali (single ticket)
- aims to ensure the Montreal/Warsaw Convention, not domestic law, prevails.



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- should there be an "ASEAN 261"?
  - guidelines or soft laws.
- various national interpretation among ASEAN member states is one of the main potential challenges.



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- The ASEAN Air Transport Working Group (ATWG) is not responsible for implementing consumer protection in the member states.
- The duty falls to ASEAN Committee on Consumer Protection (ACCP)?
- What is the current consumer protection stage in ASEAN member states?



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- Promoting the ratification of Montreal Convention by the other ASEAN member states.
- Could ASEAN take the lead in terms of purely psychiatric injury?
- The ASEAN Way - a room for mediation instead of going to court?



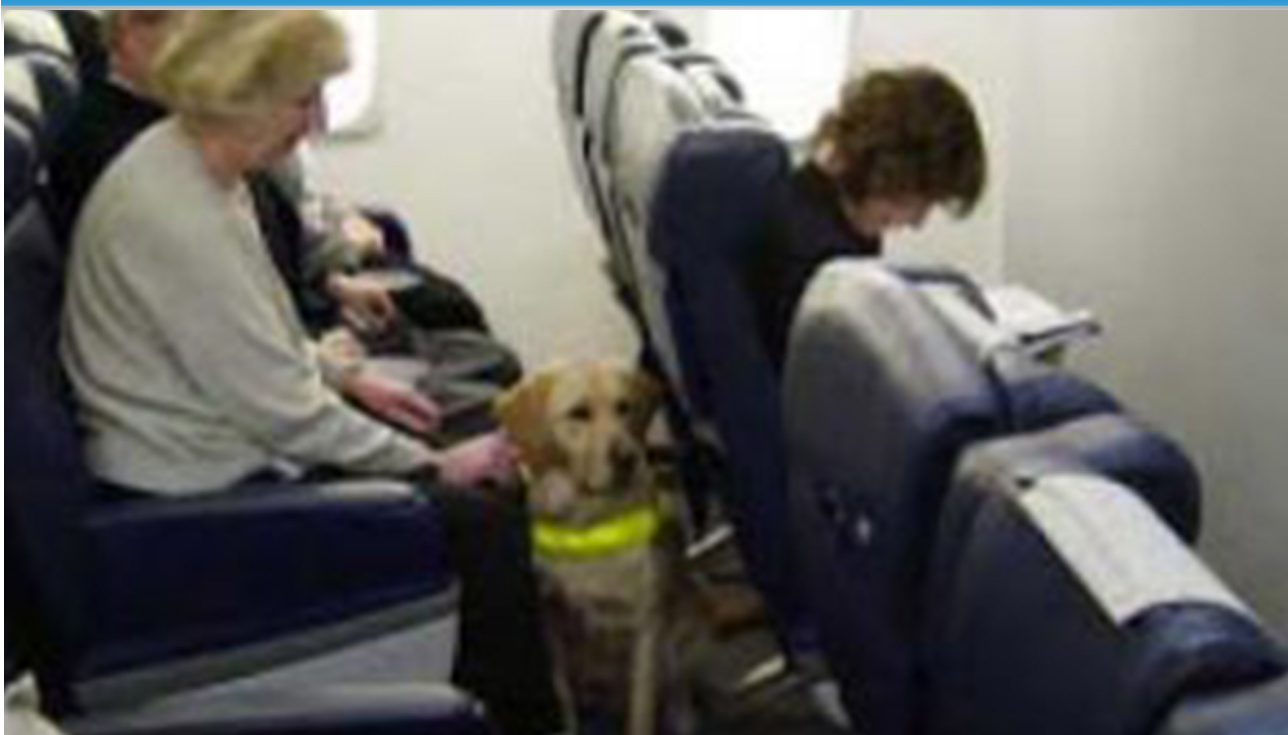
### Some Other Passenger Right Issues



- Issues behind code-share flight.
- Guarding Passenger Service Charges (PSC).
- Flying with minors (online check-in).



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Source: <https://www.anythingpawsable.com/how-to-travel-with-a-service-dog-a-complete-step-by-step-guide/>

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**Just because i used wheelchair, doesn't mean i can't fly!!!**

Source: <http://indosurflife.com/2016/04/etihad-apologizes-denying-service-disabled-indonesian-woman/>

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Source: <http://www.prisonplanet.com/despite-eu-ban-uk-makes-radiation-firing-body-scanners-compulsory.html>

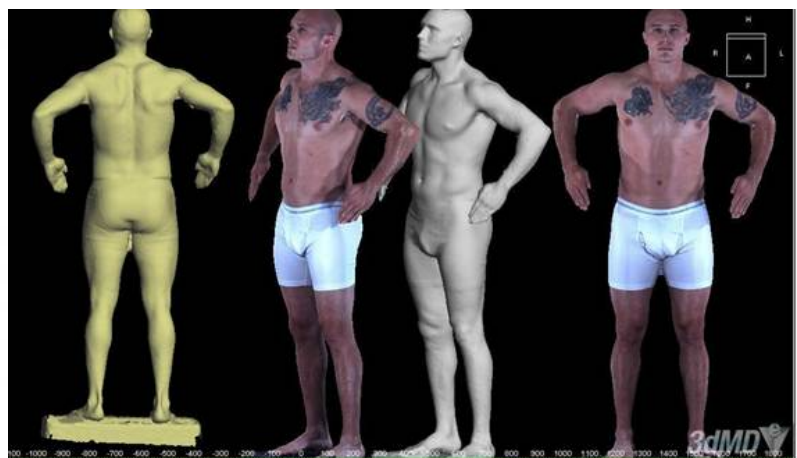
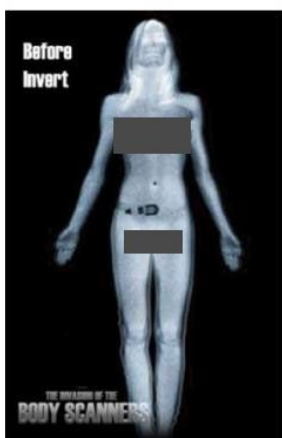
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Sources: <http://ilyke.co/wtf-leaked--airport-full-body-scans/75146/?pid=0> and <http://www.3dmd.com/post-magazine-3dmd-body-scanner-offers-360-degree-capture/>

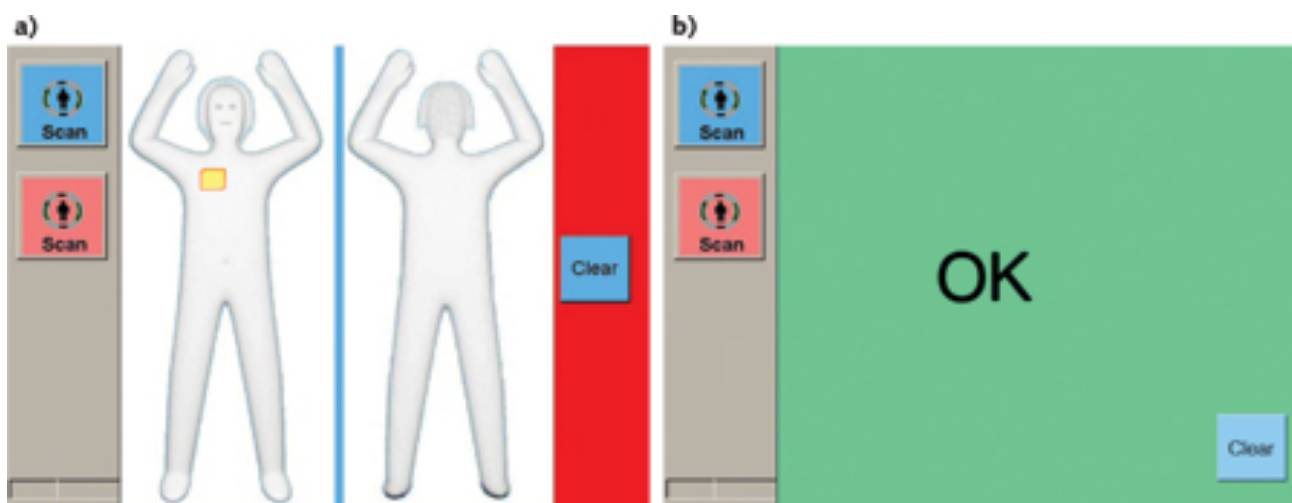
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Source: <http://www.laserfocusworld.com/articles/print/volume-49/issue-03/features/photronics-applied--defense-and-security--will-full-body-scanners.html>

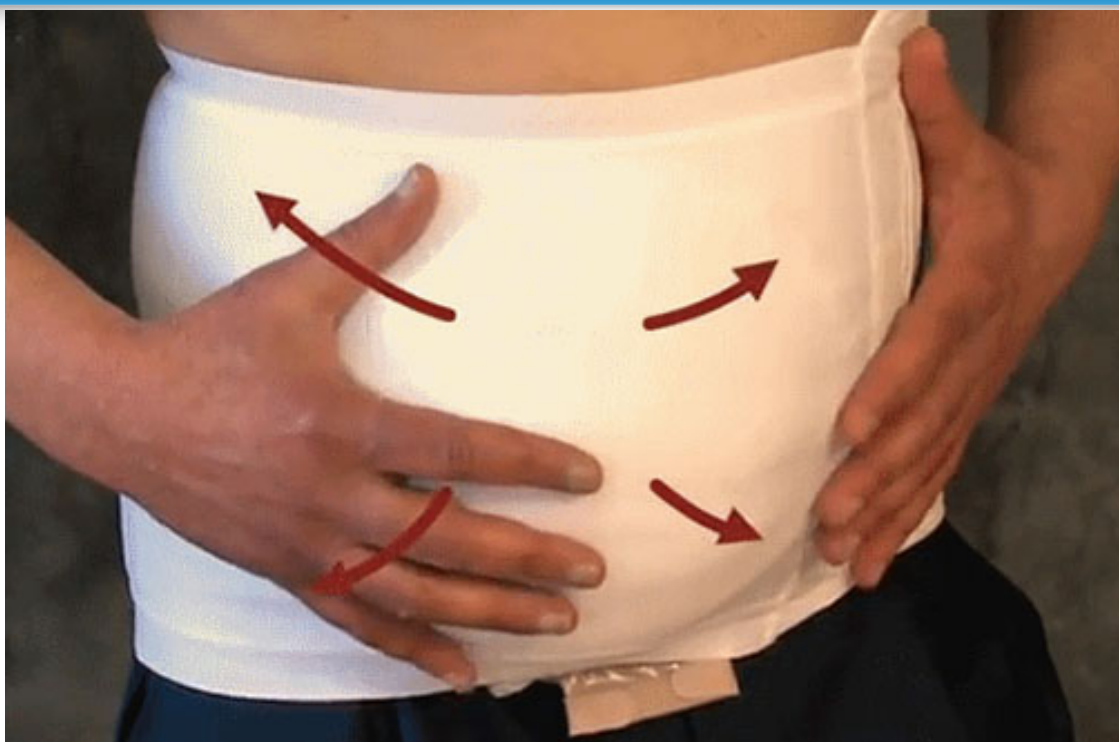
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## Towards Better Passenger Rights in ASEAN



Source: <https://www.stomabags.com/ostomy-support-belts>

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Source: <http://www.dailymail.co.uk/news/article-1240637/Mac--new-airport-body-scanners.html>

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