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COELUM

NEWSLETTER

MÉXICO, D.F.

AUGUST 2006

IN THIS NUMBER

COELUM *is Latin for air space or sky. The Romans began questioning the rights they had in the space above the land they owned and to how high above did that right extended to.* Ad coelum et ad inferos, *they discussed meaning that their right of property would extend as high up to the heavens and down to hell.*

The European Union vs. "Chicago Convention Type" Air Transport Laws.

Mario Molina and Antonio Vázquez

Nowadays, bilateral air transport agreements exist between nations around the world in order to maintain a certain balance in the air industry of every state.

This whole idea of agreements has its origin in the intention of a multilateral treaty modeled after the Chicago Convention. However, due to the practical impossibility of writing an agreement that could be acceptable for more than two countries, bilateral air transport agreements became the practical norm in the international community.

Critical subjects like pricing, definitions for scheduled flights and non scheduled flights and flight frequencies made impossible a multilateral agreement, so instead the aviation industry found its own way through the use of bilateral agreements between their respective countries. The Chicago Convention established a very simple model[1] of agreement for two countries. This was the Bermuda agreement between the United States and the United Kingdom. Signed in 1946, it would become the model for the post Second World War bilateral air services agreements. This agreement created an acceptable model of bilateral agreement, with compromises and clauses that allowed governmental intervention as well as for commercial planning of the airlines involved

1. "Form of Estándar Agreement for Provisional Air Routes", usually called "Chicago Estándar Bilateral".

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Along with the "Bermuda type" agreement, these days, protectionist agreements are the most common treaties used in the airline industry. The main difference between these two models is the frequency of flights contained in every one of them.

In this context, the increasing importance of the European Union in the past few years has made it necessary for the aviation industry to study the conflicts and similarities between relatively new European Union laws and the Chicago Convention type of air transport laws.

European Court of Justice has been taking strong steps in this controversy. The Nouvelles Frontieres decision ruled by the Court on 1986, established that the European Union competition laws apply to the air transport industry. Years later, there was the addition of the air safety matters to the jurisdiction of the European Union Institutions. And then the 1993 the final "air transport liberalization package". All these resolutions, dictated by the European Union Court, have established a clear trend that indicated that it was just a matter of time before it reached the individual bilateral air transport agreements signed between the fifteen European Union members, Iceland, Liechtenstein, Norway and Switzerland[2].

Essentially the European Union is demanding that all international agreements be under the jurisdiction of the Union, not of the individual states.

The increasing importance of the European Union in the past few years has made it necessary for the aviation industry to study the conflicts and similarities between relatively new European Union laws and the Chicago Convention type of air transport laws.

2. Iceland, Liechtenstein and Norway are in the European Economic Area.

On November 5, 2002, The Court of Justice of the European Communities delivered its judgment in the cases against eight member States (Austria, Belgium, Denmark, Finland, Germany, Luxembourg, Sweden and the United Kingdom) concerning the fact that these countries had signed individual bilateral air service agreements with the United States. The dispute in question related to the member States, and the fact that they had each violated laws because they had signed agreements that were properly the right of the European Union to administer.

Among other issues, in these judgments, the Court considered that:

a) The Member States had made commitments in areas where authority had been transferred to the European Community (e.g airport slots, intra-Community fares and rates).
b) The Member States had flouted one of the basic principles of the Treaty, namely the principle of non-discrimination: The nationality clauses in the agreements discriminate on grounds of nationality, which limits the freedom of establishment of Community companies.

According to the criteria of the judgment and in the practice, several matters that were often covered by the provisions of air service agreements now fall within the exclusive external authority of the European Community.

Areas like safety, commercial possibilities including groundhandling, taxes and duties, restrictions on the operation of airplanes relating to noise, air carrier liability, package travel and security currently are all the authority of the European Community, not of individual Sates within the Union..

As you can see, the requirements of the air transport sector in the European Union relationships with third countries is to avoid individual bilateral air agreements; agreements which originally were negotiated individually by each member State of the Community. This is so as to be able to include in these agreements all items under the authority of the European Community. A clear example of this is the fact that, as consequence of the Court´s judgments of November 5th 2002, the member States against which the Court ruled, have to take the necessary measures to bring the agreements that were challenged into line with European Community law. However, from the subject matter and the very nature of the infringements in question it became clear that the vast majority of agreements in force in almost all the member States of the European Community also breach Community law, so it now becomes necessary to bring these into line. The magnitude of the challenge is enormous but it started on 2003 and nowadays it continues with the shared participation of the European Community and the member States.

New business opportunities for Mexican aviation. An example of market pressures changing current laws.

Andrea Valencia

In September of 2005, the governments of the U.S. and Mexico got together in Washington D.C., for the Third Round of Negotiations to review the current Air Transportation Bilateral Convention that has been in force since 1960. On December 12, 2005, after several negotiating meetings, they agreed on a series of modifications to the Bilateral based on the urgent needs of the tourism sector for increased carrier designations and lift opportunities for commercial aviation between Mexico and the United States.

Due to the growth of tourism between the US and Mexico, and the number of carriers placing great emphasis on their leisure marketing, it became urgent that the Bilateral Agreement be updated to allow for additional lift and for the addition of more carriers on routes to Mexican resort destinations.

This final Amendment of the Air Transportation Bilateral Convention between the United States of America and the United Mexican States was approved by the Mexican Senate on April 25, 2006, published on the Official Federal Gazette on July 18, 2006 and became in force and binding for the parties involved, by the end of July 2006, after the parties had duly exchanged the last Diplomatic Note in which they state that they had complied with every detail required by the Amendment.

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In order to analyze the impact of such Amendment we will sum up the modifications the governments of the US and Mexico agreed in December 2005, and have which already been put into effect by both parties:

I. An increase from two to three, in the number of designated passenger airlines from each country that can fly between specific points in Mexico and the United States. These points are: Acapulco, Cancun, Cozumel, Huatulco, Ixtapa/Zihuatanejo, Loreto, Manzanillo, Mazatlán, Mérida, Oaxaca, Puerto Vallarta and San José del Cabo. Guadalajara and Monterrey changes will take effect on October 27, 2007.

II. The same modifications where made in regards to Cargo Operators, with the same delay of validity for the cities of Guadalajara and Monterrey.

III. The restriction that only five Cargo Airlines of each country that could participate on Cargo Market was eliminated from the Bilateral Agreement.

IV. For commercial purposes only (sales, advertising, etc.) the cities of Toluca and Mexico City will be considered as a same destination.

V. Each party will be able to designate two airlines that could operate on the routes between Mexico City and Chicago, Dallas, Dayton, Houston, Laredo, Miami, New York and San Francisco.

VI. Each party will be able to designate three airlines that could operate in the route of Mexico City- Los Angeles.

VII. For commercial purposes only (sales, advertising) the cities of Washington and Baltimore will be considered as a same destination

VIII. An increase from four to ten for the number of companies that may arrange Share Codes Agreements with the other party.

These changes show that the realistic necessities of commercial aviation today need to bring governments together to agree on an ongoing basis to a series of measures, in order to keep up with the demands of the current economy. This recent change in the Bilateral Agreement is certainly a positive movement towards the aviation needs of today, and represents an important opportunity for the tourist sector and for commercial aviation.

However, it is also important to keep in mind, that in spite of the commercial necessities of the aviation business today, valuable governmental agreements must always be taken and assumed under a sense of reciprocity and commercial fairness.

The actions taken to amend the Air Transport Bilateral Convention are a positive first step in the development of a Treaty or Convention, in which all parties involved are able to enjoy equal commercial and governmental benefits.

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This month's extract of Mexican aviation news:

- **The World Bank support Volaris**
  El Universal. 1 / Jul / 2006
  http://www2.eluniversal.com.mx/pls/impreso/web_columnas.detalle?var=59119

- ***SCT entrust that Aeromexico Hill be sell by the end of this year.***
  La Jornada 12 / Jul / 2006
  http://www.jornada.unam.mx/2006/07/12/036n4eco.php

- **¿There are an Aerospace industry in Mexico?**
  El Universal. 12 / Jul / 2006
  http://www2.eluniversal.com.mx/pls/impreso/web_columnas.detalle?var=59167

- **World Bank authorizes a credit line of 40 md to Volaris.**
  La Cronica. 13 / Jul / 2006
  http://www.cronica.com.mx/nota.php?id_nota=250876

- **Air market will increase this year.**
  Reforma. 13 / Jul / 2006
  http://busquedas.gruporeforma.com/utilerias/imdservicios3W.DLL?JSearchformatS&file=MEX/REFORM01/00755/00755664.htm&palabra=crecera%20mercado%20&sitereforma

- **Air Madrid are not interested in Aeromexico.**
  El Economista. 21 / Jul / 2006
  http://www.economista.com.mx/articulos/2006-07-20-16160

- **Legislator accuse the airline's Director to be interested in obtain a "millionaire commission" with Aeromexico´s sell.**
  Milenio. 25 / Jul / 2006
  http://www.milenio.com/mexico/milenio/nota.asp?id=414719

- **Post electoral crisis is complicated the transaction in Aeromexico Case.**
  Milenio. 25 / Jul / 2006
  http://www.milenio.com/mexico/milenio/nota.asp?id=415744

- **Load airlines, in process of expansion.**
  El Economista. 26 / Jul / 2006
  http://www.economista.com.mx/articulos/2006-07-25-16448

- **Airport authorities check lu7ggage before boarding.**
  El Debate. 26 / Jul / 2006
  http://www.debate.com.mx/eldebate/index.asp?IdTPDMilenium=42&IdArt=1770147&IdCat=3043

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