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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.

[Arbitration in Mexico](#) [Antonio Vázquez](#)

Arbitration as a mechanism for the resolution of disputes has been increasing in Mexico and nowadays is an important and useful method of solving disputes.

In 1993 the UNCITRAL model law of arbitration was adopted into Mexican Law and included in the Commerce Code. A complete chapter named "Commercial Arbitration" regulates the arbitration procedure in commercial matters as a supplementary law, provided that the arbitration procedure takes place in Mexican territory and the parties have not chosen specific rules of arbitration or have chosen Mexican rules of arbitration. As consequence, the culture of arbitration has been growing up in Mexico. A clear example of this is that other private Mexican Institutions like the Mexican Arbitration Center (CAM) and the National Chamber of Commerce of Mexico City (CANACO) have created their own arbitration rules and participate as administrative institutions in arbitration proceedings.

Mexico's experience of arbitration procedures has been increasing every year. For example, according to the 2004 statistical report of the International Court of Arbitration (ICC), among the 116 different countries that were involved in cases registered in 2004 by this Institution, Mexico occupied the tenth place, acting in 37 arbitration procedures. Mexico City for example, was selected as place for arbitration in ten cases.



Sierra Y Vazquez specialists are very doubtful that the market, as it currently exists has the ability to absorb this enormous expansion of air lift in the short to medium term.

This represents the tenth city in international arbitration procedures administrated by ICC on 2004. In 2005, these statistics show that Mexico occupied the seventh place on the list of most frequent nationalities on arbitration procedures, acting in 50 cases and Mexico City was the eighth city on the list of most frequently selected cities for arbitration.

From the domestic point of view, the statistical report of 2005 issued by CAM shows that 33% of the arbitration disputes have been solved by the arbitrators appointed by the Institution.

I consider that this statistic is important because it shows that the culture of the "bona fide" in arbitration is starting in Mexico.

Another important aspect to take into consideration is the acceptance and the assimilation by the Mexican courts of this alternative way of solving disputes as a serious and legal method. This is a great advance because some years ago arbitration was not accepted at all. According to the statistics of CAM, 60% of the cases submitted before the Mexican Courts for recognition and enforcement were solved favourably while the other 40% are still pending. This statistic shows that in the recent years, the Mexican courts have accepted arbitration resolutions and have recognized them as a valid method of solving disputes. This has been confirmed with several judicial precedents in which the Mexican courts have ruled in cases of arbitration, thus confirming the constitutionality of the arbitration clauses and the arbitration procedure.



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In addition, the enforcement of the arbitration awards in Mexico must be an expeditious legal procedure. For example article 1457 of the Commercial Code limits the possibility that the Mexican judge may refuse the recognition or enforcement of the arbitral award. This article follows:

“Art 1462.- Recognition or enforcement of an arbitral award, irrespective of the country in which it was made, may be refused only:

At the request of the party, against whom it is invoked, if that party furnishes to the competent court where recognition or enforcement is sought proof that:

(a) A party to the arbitration agreement was under some incapacity; or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made.

(b) The party against whom the award is invoked was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present this case.

(c) The award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration, provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, that part of the award which contains decisions on matters submitted to arbitration may be recognized and enforced.



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(d) The composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or

(e) The award has not yet become binding on the parties or has been set aside or suspended by a court of the country in which, or under the law of which, that award was made; or

(f) If the court finds that according to the Mexican law the subject-matter of the dispute is not capable of settlement by arbitration; or

(g) The recognition or enforcement of the award would be contrary to public order.”

Nowadays, the judicial procedures to enforce an arbitral award are still lengthy and difficult, but the tendency is that the Mexican courts do not analyze any aspect other than such enlisted in article 1462.

I expect that these general ideas may give you additional information about the Mexican experience of commercial arbitration.



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México and the Montreal Convention of 1999

Mario Molina

As is happening with the law the world over, legal relationships in every industry have become more and more regulated by specialized laws.

The Air Transport industry has become a large business where we continue to see an ever growing body of regulation. Also private law brings into the game many additional subjects that every air carrier must take into consideration in their daily operation.

Areas like insurance, finance and intellectual property are the common place areas where aviation industry faces the final consumer of their service. However, the most important area of private law is definitely the liability of the airline towards passengers, shippers and third parties on the ground. Over time many attempts have been made to form a set of general regulations for the industry. In the area of private law, the liability of the airlines has been the driving force in the consolidation of a number of specific criteria. All of this work has taken place through a system of international conventions that begun with the Warsaw Convention of 1929.

The Warsaw Convention tackled problems like product liability, air traffic control, and airport liability, liability for collisions, government liability and insurance. This Convention created a system that consists of the original "Convention for the unification of certain rules relating to International carriage by air of October 12, 1929", as amended by "The Hague Protocol of September 28, 1955", as amended by "The Montreal Agreement of September 25, 1975", and as supplemented by "The Guadalajara Convention of September 18, 1961", and as further supplemented by the two Montreal Inter-Carrier Agreements of 1966, and by the IATA Conditions of contract printed on airline passenger tickets and baggage checks. The original spirit of the Warsaw Convention was to protect the developing airline industry from potentially ruinous liability claims. This was achieved by the imposition of liability limits and financial ceilings on the liability of air carriers.

Mexico signed the Montreal Convention of 1999 and joined the group of States that participated in this formation of a uniform code of common rules on liability applicable to the carriage of passengers, baggage and cargo for international air carriers around the globe

This confused pile of documents made the Warsaw Convention rules very difficult to apply in the practice. A common problem was trying to determine which Warsaw or Warsaw related instrument would apply in a given case. For these reasons, a consolidated version of the Warsaw Convention was adopted on May 28, 1999 in Montreal, and called "The Convention for the Unification of Certain Rules for International Carriage by Air".

Recently, Mexico signed the Montreal Convention of 1999 and joined the group of States that participated in this formation of a uniform code of common rules on liability applicable to the carriage of passengers, baggage and cargo for international air carriers around the globe.



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The Montreal Convention sets two requirements in order to apply the coverage to an airline route:

- A) Must be a round trip journey from a country that has ratified the Convention or;
- B) One way journey in which both, the country of origin and the country of destination have both ratified the Convention.

The main changes from the Warsaw Convention Regime are among others:

- New liability limits for cargo and baggage.
- Electronic tickets are specifically mentioned.
- Paper airway bills are no longer required for cargo.
- Strict liability for the first 100,000 special drawing rights (international reserve asset created by the International Monetary Fund) for damages related to death or bodily injury of a passenger occurring during international carriage.



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Mexico subscribed the Convention from the day it was issued, setting November 4, 2003 as date of entry. Nevertheless, the practice is that the “contractual carrier” establishes a liability determined unilaterally. The customer can only accept the terms of the service as it is offered.

The “Ley Federal de Protección al Consumidor”, provides to the customer a procedure where he can claim from the carrier the liability consequences derived for example from lost baggage. This procedure offers the possibility of settlement for the parties before the Mexican Authority, and attempts to avoid a civil procedure before the local courts.

In the same way that the Mexican Government signed this International Convention, it should establish clear rules for the Mexican “contractual carriers” in order to establish a common model for the terms and conditions contained in all air tickets sold to the traveler in Mexico. Litigations against airlines under the Montreal Convention would surely have a successful resolution for the plaintiff, however, such an important and significant treaty should be embraced by the authority and be applicable across the whole aviation sector of the country.

Montreal Convention represents a useful means of defense for both customer and airline.

In the cargo area, the goals of the Convention are identical to those of the 1929 draft. Major changes have just been made to in order catch up with industry technology and set up a uniformity in claims handling from one country to another.

Inconsistent court rulings around the world have not merely led to significant change in the spirit of the original Warsaw Convention rules, but the new legal environment created with the Montreal Convention will be far friendlier to air carriers and forwarders. Therefore, in the future, it will be extremely important for countries like Mexico to encourage the creation of new conditions for the correct operation of these types of regulations. Regulations that provide to the industry a modern and efficient way of doing business around the world.



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SURVEY:

WHAT WILL AVIATION BE LIKE IN THE NEXT TEN YEARS?

Eduardo Consentino

In this and in the following two issues of Coelum, we will take a look at the future of aviation from the point of view of diverse participants in this vibrant industry. The intention of this exercise is for various experts in the field from different backgrounds and perspectives to respond to the same questions as seen from the particular side of the industry from which each of them has developed his or her own personal experience.

In this issue we will cover the latin america perspective which is kindly provided by Mr. Eduardo Consentino, one of the most prominent aviation lawyers of Argentine and of the world.

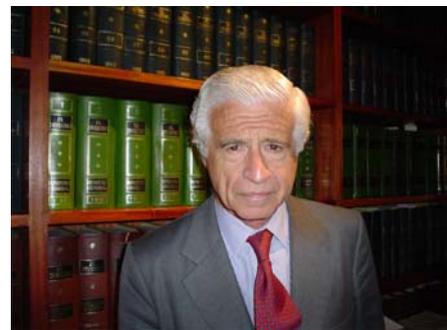
- What do you think is the future of aviation, globalization or regionalism?

In my opinion, we cannot apply fixed or uniform standards.

The European Community has promoted and consolidated a regional process in civil aviation. This may be seen in different aspects, which have been consolidated in an institutional framework that has contributed to achieve a unified vision of air transport, integrated in technical, operative, commercial and legal aspects.

In Latin America, on the other hand, we cannot appreciate a development towards a regional focus owing to the fact that the most significant markets are not in the region and therefore, commercial air services are mainly directed towards Europe, the United States and South-East Asia.

This is obvious, if we take into account the lack of success obtained by the Fortaleza Agreement which has had no concrete application in integrating national flag carriers.



Eduardo Cosentino

- Do you think that the current bilateral system still has a future?

I agree that the bilateral system to regulate commercial air relations has been very useful in putting air transport in order.

Experience has clearly demonstrated its capacity to adapt to the specific route conditions of the States involved in the negotiation, as well as the feasibility to implement conditions in changing markets.

However, there is an advance in multilateral agreements, mainly on behalf of the European Community which, following decisions made by the Council, has com-



menced negotiations destined to enter into agreements related to air transport with third-party States.

It is evident that the multilateral regulation system will begin to replace bilateral relations at the same time as the regionalisation process develops.

- [What would you say is the effect of international alliances of airlines in the context of competition?](#)

“Alliances” between airline companies reflect the concentration phenomenon in the air transport industry, through which airlines tend to deal with restrictions in traffic rights and achieve cost reductions through economies of scale.

This formula is implemented through cooperation agreements as in the case of “code share agreements”, in which one or more airlines tend to coordinate the offer of air services on a certain route.

This joint cooperation formula produces significant limitations to competition, as it entails an important expansion of certain commercial holdings in some markets.

Thus, it is necessary to incorporate in the airline legislation rules that will tend to avoid “antitrust practices or an abuse of dominant position” which would imply distorting a “healthy economic operation”.

- [Is national control an issue in your country? Is this about to change?](#)

In the Argentine Republic, the current legislation in force, such as Law Number 19030/71, has considerable restrictive content in relation to granting installation rights, capacity offer and traffic rights.

However, it should be acknowledged that a process to open markets has been started and enabled to liberalise certain restrictive criteria ruling the commercial air activity.

In consequence, a “modernisation” mechanism is currently being promoted in the airline legislation in order to adjust the current legislation to the new trends applied in the world of the commercial air community.

Mr. Eduardo T. Consentino is the founding senior partner of the Langbehn & Consentino law office. He is professor of navigation law at the University of Buenos Aires; vice president of the Instituto de Derecho Aeronáutico y de la Aviación Comercial; former president of Facilitación del Transporte Aéreo (FAL).

Mr. Consentino has extensive experience and expertise in traffic rights and has participated in bilateral meetings held between Argentinean aeronautical authorities and European and Latin American countries.



This month's extract of Mexican aviation news:

○ Aeromexico reduces it's capital

Aeromexico announced to the investing public that it will reduce its capital so that the shareholders will receive a refund which will total more than 1,349 million pesos. This action is a result of the offer made by the Board of Directors of Consorcio Aeromexico adopted on December 20, 2005, at the Annual Shareholders Meeting.

El Universal. 7 / Sep / 2006

<http://www.eluniversal.com.mx/notas/373580.html>

○ Inauguration of Toluca International Airport's newest facility on October 15,-2006

Toluca International Airport's newest facility will start operations on October, 15th, although part of the airport is still under construction, all construction is expected to be finished by December 30, said Gerardo Esparza, of the SCT.

Diario de México. 11 / Sep / 2006

http://www.diariodemexico.com.mx/?module=displaystory&story_id=92123&format=html

○ Mexican members of Congress move forward rules for protection for air-travellers

The Chamber of Deputies will send a memorandum to the Senate regarding the Federal Law of Protection of Airline Passengers, due to the fact that last year, airports reported 51,990 delayed flights and 17,445 cancelled flights.

Diario de México. 12 / Sep / 2006

http://www.diariodemexico.com.mx/?module=displaystory&story_id=92224&format=html

○ Low-cost airlines have achieved a 19% share of Mexico's domestic market

In the first seven months of 2006, low-cost carriers achieved a market share of 19% of the Mexican domestic market. The Secretariat of Communications and Transport of Mexico (SCT) said that according to preliminary figures, during July and August, low-cost carriers increased their share of by 5%.

Reforma. 14 / Sep / 2006

<http://busquedas.gruporeforma.com/utilerias/imdservicios3W.DLL?JSearchformatS&file=ME X/REFORM01/00779/00779447.htm&palabra=mueven%20low%20cost&sitereforma>

○ The Mexican Association of Travel Agents decides not to sell Aerocalifornia tickets

The AMAV said that its member agencies will not sell Aerocalifornia tickets because the airline has not yet solved the fifteen hundred refund requests that its clients presented to the Federal Prosecutor office of Consumer Affairs (Profeco). Profeco advised that Aerocalifornia does not offer any guaranties to either the passengers or to the agents that sell the tickets.

La Jornada. 15 / Sep / 2006

<http://www.jornada.unam.mx/2006/09/15/037n2eco.php>

○ Mexicana Airlines has lost more than 62 million dollars in 2006

In 2006 Mexicana lost more than 62 million dollars. A specialist indicated that as a result, Mexicana Airlines might have to declare bankruptcy.

Milenio. 18 / Sept / 2006

<http://www.milenio.com/mexico/milenio/nota.asp?id=436750>



- o **GAP reports increased passenger traffic.**

The Pacific Airport Group (GAP) reported a 5.7% increase in the number of passengers in August. This they said is a result of the return of Aerocalifornia operations and the increasing lift of low cost airlines.

Notimex. 19 / Sep / 2006

<http://mx.news.yahoo.com/s/060918/7/1w089.html>

- o **SCT will review the regulation of the Civil Aviation Law**

The Secretariat of Communications and Transport (SCT) will review the regulations of the Civil Aviation Law in order to establish clearer criteria and faster procedures in the granting of authorizations and permissions for national and international routes.

Notimex. 21 / Sept / 2006

<http://espanol.news.yahoo.com/s/060920/4/1hmao.html>

- o **Mexicana and ASSA continue negotiations**

Mexicana announced that it will initiate a series of meetings in order to come to a productivity agreement with the Association of Flight Attendants (ASSA) which waived it's rights to strike that would have taken effect on Friday, September 15.

La Jornada. 21 / Sep / 2006

<http://www.jornada.unam.mx/2006/09/21/030o2eco.php>

- o **Mexico City Airport increases passenger traffic by 2.6% from Jan to Aug 2006.**

In the first eight months of this year, the number of passengers handled by 46 mexican and foreign airlines increased by 2.6% compared to the same period last year.

Caribe Preferente. 26 / Sep / 2006

http://www.caribepreferente.com/index.php?option=com_content&task=view&id=5210&Itemid=41

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