

COELUM

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COELUM Pronunciation: 'che-l&m, is Latin for airspace 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.

Efforts to update anti corruption legislation in Mexico.

by *Juan Antonio Tiscareño.*

In this article we will analyze relevant aspects of Mexico's existing legal framework for the fight against corruption. We will also draw attention to the most recent legislative efforts to modernize our legal system in that matter.

Although there are many binding treaties in our current legislation (e.g. the Inter-American Convention against Corruption, the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions, etcetera), from our point of view the fundamental law to combat corruption is the United Nations¹ Convention against Corruption (UNCAC). Therefore we will center our study on this convention, because it represents a milestone in the history of legislative efforts that have been made to fighting corruption. It is a multilateral treaty covering all fundamental aspects of the theme and it far surpasses the other conventions effective in Mexico. This is not because they are hierarchically inferior, since ultimately all have the same legal status and are part of the Mexican legal system, but because it surpasses them, as it is much more detailed and comprehensive in content.

*“Although there are many binding treaties in our current legislation...
...from our point of view the fundamental law to combat corruption is
the United Nations Convention against Corruption (UNCAC).”*

Mexico signed the UNCAC on December 9, 2003, and the convention entered into force on December 14, 2005. It contains chapters covering topics of general provisions, preventive measures, criminalization and law enforcement, international cooperation, asset recovery, technical assistance and exchange of information, mechanisms for implementation and final provisions. As is stated in article 1, its main objectives are:

- To promote and strengthen measures to prevent and combat corruption more efficiently and effectively;
- To promote, facilitate and support international cooperation and technical assistance in the prevention of and fight against corruption, including asset recovery;
- To promote integrity, accountability and proper management of public affairs and public property.

1.- The United Nations organization has a rich and complex history which exceeds the nature of this article. Suffice to say that is an international organization founded in 1945 after the Second World War, whose original objective is to maintain international peace and security, developing friendly relations among nations, and promoting social progress, better living standards and human rights. The United Nations works on a very wide range of issues as: refugees protection, disaster relief, sustainable development, environment, counter terrorism, disarmament, human rights, governance, economic and social development, etc.

The UNCAC contains a specific provision related to the private sector, which encourages the promotion of models or standards that must be consistent with the domestic laws of the country involved. These standards include topics such as:

- Promoting cooperation between law enforcement agencies and relevant private entities.
- Promoting the development of standards and procedures designed to safeguard the integrity of relevant private entities.
- Promoting transparency among private entities.
- Preventing the misuse of procedures regulating private entities.
- Preventing conflicts of interest.
- Ensuring that private enterprises have sufficient internal auditing controls to assist in preventing and detecting acts of corruption and that the accounts and required financial statements of such private enterprises are subject to appropriate auditing and certification procedures.

On the other hand, it is important to stress the aspect of asset recovery.

The return of assets is a fundamental principle of the UNCAC and promotes the creation of measures in the different countries, in accordance with their domestic laws, to regulate and verify correctly the possible acts of corruption in their financial systems. Such measures would include for example:

“The return of assets is a fundamental principle of the UNCAC and promotes the creation of measures in the different countries, in accordance with their domestic laws, to regulate and verify correctly the possible acts of corruption in their financial systems.”

- Require financial institutions within its jurisdiction to verify the identity of customers, to take reasonable steps to determine the identity of beneficial owners of funds deposited into high-value accounts, and to conduct enhanced scrutiny of accounts sought or maintained by or on behalf of individuals who are, or have been, entrusted with prominent public functions and their family members and close associates.
- Prevent and detect, with the help of its regulatory bodies, the establishment of banks that have no physical presence and that are not affiliated with a regulated financial group.

- Establish, in accordance with their domestic laws, effective financial disclosure systems for public officials that shall provide appropriate sanctions for non-compliance.

The Convention also contains measures concerning the direct recovery of property and mechanisms for recovery of property through international cooperation, for purposes of confiscation, return and disposal of assets, etc.

Recent legislative efforts

In March of this year, President Calderon presented a bill to the Senate whose purpose is to prevent corruption in public contracting. The bill has been reviewed by the Senate, and at the time this article is being prepared, is in the House of Representatives for a further discussion. It is probable that the process of approval of the bill will last several weeks.

In the text of the initiative, it is stated that under the multiple negative consequences of corruption, it is intended to issue a law that prevents and punishes bad practices of public officials and individuals in public procurement. It also explains that the Mexican government has the duty to legislate against corruption and try to eliminate it, and emphasizes that our country has signed several international instruments that make us undertake the obligation to provide national legislation that prevents and eradicates corruption.

Also, the bill emphasizes that the legislation on public contracting has not been effective or sufficient to inhibit corrupt behavior –although there are laws that cover specific aspects of corruption and felonies, such as the Federal Criminal Code, the Federal Law of Administrative Liabilities of Public Officials, the Organic Law of the Federal Government, the Federal Law of Transparency and Access to Public Government Information, etc.,- it has been agreed that the issuance of a law of this nature cannot be postponed, because it will help to complement the legal system in that topic. A law which decisively sets clear guidelines on these issues for Mexican society, in order to ensure a state of legality, honesty and efficiency. Therefore the bill aims to have the proper liabilities and sanctions that will be imposed on individuals and corporations for acting unlawfully, by reason of their participation in federal public contracts, as well as by misconduct in international business transactions.

It is not possible to say much more about this bill, as it is currently under discussion in Congress. Apparently the text of this bill will be closer to the text of the Convention on Combating Bribery of Foreign Public Officials in International Business Transactions that we mentioned before and not to the UNCAC (which has a wider scope. It will surely have many amendments that prevent us at this time from providing a final opinion about it. It is however desirable to remain alert for an analysis of the final draft of the law, which predictably will be public in a few months.

Aviation Biofuels.

by *Alejandra Llopis**

The world is turning to governments and business to reduce the human impact on climate change and environmental damage, that is the reason that biofuels¹ provide clean sources of fuel to power the world's fleet of aircraft and help billions of people who travel by air to lower the impact of their journey on our planet.

Biofuels can be produced from any renewable biological carbon material, although the most common sources are plants that absorb carbon dioxide (CO₂) and use sunlight to grow. The two most common feedstock sources for making biofuels are plants rich in sugars and bio-derived oils; this is commonly sourced from plants such as corn, soybeans, algae², jatropha³, halophytes⁴ and camelina⁵, which is processed and can either be burned directly or converted by chemical processes to make high-quality jet and diesel fuels. These are known as second-generation biofuels and they can be used for aviation.

I First and Second generation aviation biofuels.

The term “first generation biofuels” refers to the fuels produced from organic materials using standard technology. These are being used more and more as nations and corporations look for alternatives to fossil fuels. Biofuels are renewable and potentially less polluting, although they are certainly not without ecological problems of their own. The two biofuels most commonly used are biodiesel and ethanol, but neither of these are suitable fuels for powering commercial aircraft.

The second generation of biofuels is derived from non-food crop sources, these biofuels can also be grown in mass in a range of locations, including deserts and salt water. Each of the second-generation feedstocks being investigated for aviation use has the potential to deliver large quantities of greener and potentially cheaper fuel.

Second-generation biofuels must have the ability to be a direct substitute for traditional jet fuel⁶ for aviation (known as Jet A and Jet A-1) and have the same qualities and characteristics. This is important to ensure that manufacturers do not have to redesign engines or aircraft and that airlines and airports do not have to develop new fuel delivery systems.

* IN COLABORATION WITH SAMANTHA GARNICA

- 1.- **Biofuels** are derived from biomass. They differ from fossil fuels in that they are derived from renewable sources.
- 2.- **Algae** are potentially the most promising feedstock for producing large quantities of sustainable aviation biofuel.
- 3.- **Jatropha** is a plant that produces seeds containing inedible lipid oil that can be used to produce fuel.
- 4.- **Halophytes** are salt marsh grasses and other saline habitat species that can grow either in salt water or in areas affected by sea spray where plants would not normally be able to grow.
- 5.- **Camelina** is primarily an energy crop, with high lipid oil content. The primary market for camelina oil is as a feedstock to produce renewable fuels.
- 6.- **Jet fuel** is a type of aviation fuel designed for use in aircraft powered by gas-turbine engines.

“Biofuels provide aviation with the capability to partially replace carbon-intensive petroleum fuels.”

The aviation industry has identified the development of biofuels as one of the major ways to reduce its greenhouse gas emissions. Biofuels provide aviation with the capability to partially replace carbon-intensive petroleum fuels.

II Biofuel provides environmental and economic benefits.

Biofuels provide an estimated 80% reduction in overall CO2 lifecycle emissions compared to fossil fuels. They contain fewer impurities which enables an even greater reduction in sulphur dioxide and soot emissions than has been achieved using present technology.

“Biofuels can also provide economic benefits to parts of the world that have large amounts of marginal or unviable land for food crops, but are suitable for growing second-generation biofuel crops.”

Fuel is one of the biggest operating costs for the aviation industry. The changing price of crude oil also makes it very difficult to plan and budget for operating expenses long-term. Sustainable biofuels may offer a solution to this problem since their production can be spread worldwide, and across a number of different crops, thereby reducing airlines exposure to the fuel cost volatility.

Biofuels can also provide economic benefits to parts of the world that have large amounts of marginal or unviable land for food crops, but are suitable for growing second-generation biofuel crops.

III Demonstration flights using biofuels.

In February 2008, Virgin Atlantic jumbo jet flown between London’s Heathrow Airport and Amsterdam’s Schiphol Airport using fuel derived from a mixture of Brazilian babassu nuts and coconuts. Environmentalists have branded the flight as a publicity stunt and claim that biofuel cultivation is not sustainable.

In December 2008 a test flight was performed by Air New Zealand in Auckland, New Zealand on a Boeing 747-400 with one engine running on a 50% mix of biofuel.

In January 2009, a Continental Airlines test flight on a Boeing 737-900 and it performed better than expected, with the fuel having the same performance as normal jet fuel, and the pilots

reporting that less of the fuel was used, meaning it is potentially more powerful than normal jet fuel.

In April 30, 2010, United Airlines completed the first flight on an Airbus A319, using natural gas synthetic jet fuel.

In November 2010, Airbus and Brazil-based TAM Airlines together have conducted the first test flight with Jatropa-based biofuel on an Airbus A320.

In April 2011, Interjet and Airbus conducted the first biofuel test flight in Mexico. They used an Airbus 320 that successfully flew from Mexico City International Airport to Tuxtla Gutierrez airport in the southern State of Chiapas.

IV Biofuel in Mexico

The Mexican Federal Government, following objectives that the international aviation industry has established, has started an ambitious program of action to ensure the development and viability of sustainable aviation biofuels in the country. This consists of active participation via the Mexican Aviation Authority (DGAC), as well as the design of a “Flight Plan Towards Sustainable Aviation Biofuels in Mexico”, coordinated by Aeropuertos y Servicios Auxiliares (ASA, Airports and Auxiliary Services)⁷. The main idea behind the Flight Plan Towards Sustainable Aviation Biofuels in Mexico is to analyze the existing and missing links in the supply chain for sustainable biofuels and to communicate to society at large the benefits that aviation biofuels can bring.

ASA is the sole supplier of jet fuel in Mexico, responsible for all aircraft operations and the management of over 60 fuel farms in the Mexican airport network. In the global context, Mexico represents 2% of the world’s jet fuel market, as it provides close to 10 million liters a day for approximately 2,300 flights what could be considered that ASA can act as the promoter and catalyst of the aviation biofuel industry in Mexico.

Mexico has historically been handicapped in the production of the necessary fuels to feed the requirements of its economy. However, in the production of jet fuel, Mexico has always been self sufficient. It is in the interest of ASA to guarantee the production of aviation biofuels, so that Mexico has the capacity to meet its future internal demand. ASA has found an economic case for planning specific refining capacity. In fact, by 2020, it is expected that up to four aviation biofuel specific refineries will be operating in Mexico, generating a considerable amount of sustainable biofuel, this can help transportation needs while reducing greenhouse gas emissions while helping the Mexican rural economy. In addition to the mentioned plan, the city

7.- http://www.asa.gob.mx/wb/webasa/experiencia_proyectos_especiales.

of Chiapas is developing another plan for the year 2012 for the construction of a biofuel refinery that will have the capacity to produce biofuel.

We can conclude that the supply of fuel to the commercial aviation industry is now on a relatively small scale that its use is less complex than for other forms of transport. For this reason, it is anticipated that it will be easier to fully implement the use of sustainable biofuels in aviation than in other transport systems. The integration of biofuels into the aviation system is potentially a lot easier than it would be in a more dispersed, less controlled, public fuel delivery system.

The use of sustainable biofuels that do not contribute to global warming, emit less particulate pollution than other fuels, this can provide the air transport industry with a near-term solution to provide a fuel with a lower environmental impact than petroleum-based fuels.

Mexicana can lose its concession: SCT.

The Ministry of Communications and Transport said that if Mexicana fails to achieve capitalization, the company would be declared in bankruptcy and this would be a reason to revoke its concession.

El Economista . 01/April/11.

AICM sets conditions for the returning of Aviacsa.

The airport director said that Aviacsa has accumulated debts of between 9 and 10 million pesos for the lease of counters, hangars and offices at the Mexico City International Airport (AICM), which debt has to be paid if it intends to restart operations. The airline also has to provide a series of guaranties and at least a 15 day advance payment to support its operation in the short-term; otherwise it cannot fly in May. *Milenio*. 04/April/11.

Riviera Maya Airport -cancelled!

It is almost one year since the start of the competition for the construction of the Riviera Maya Airport the tender process will now be cancelled. The reasons are not stated. *El Economista*. 05/April/11.

Interjet, flirts with the Mexican Stock Exchange.

In two weeks there will be an announcement as to whether or not Interjet shares will be offered to the market. This would be an important source of capital for the company. *Excelsior*. 06/April/11.

Recovery of the Mexican air industry.

The Mexican Air Transport National Chamber (CANAERO) sees evidence of recovery in the air transport market and foresees that the activity of national and international carriers will continue to move upwards. According with the information provided by the General Directorate of Civil Aviation (DGAC), during 2010 the total number of passengers transported by air in Mexico increased on 3.2% compared to 2009. *La Crónica* 11/April/11.

Aeromexico Group advised that is expecting to receive MxP\$3,750,821,017 for its share offer. AeroMéxico, the biggest Mexican carrier, made its debut on the Mexican Stock Exchange (BMV) with a starting price of 31 MxP per share on an Initial Public Offering (OPI) of around of the 18% of its capital. It is expecting to raise 318 million dollars. This is the first Initial Public Offering this year on the Mexican Stock Exchange. *Reforma*. 14/April/11.

In this month extract was prepared by Jessi Saba, Vera Garcia and Samantha Garnica.

The fuel rise jeopardizes carriers.

Fuel prices have reached a critical level and have become the main cost for carriers, even higher than the employee payrolls that were principal expense for several years. “For each cent of increase to the fuel price per liter, American Airlines expenses increase by 25 million dollars per year” said the airline’s director of corporate communication for Miami, Caribbean and Latin America. *El Universal*. 19/April/11.

AeroMéxico: An investment for the brave.

AeroMéxico had a triumphant return to the Mexican Stock Exchange raising an amount of 330 million dollars. But, this investment has many risks. Many fortunes have been made by investing in the aviation industry, but many more have been lost. This industry is very volatile due to the rising cost of fuel, a cost which is tending to increase even more. *Milenio*. 20/April/11.

Airport land in dispute.

An approximate 350-thousand-pesos, are owed to the Veracruz Airport because of the expropriation of some lands in 1981 that were not paid in full or on time. The Ministry of Communications and Transportation is certain that if the amount is not paid right away, it will increase considerably because of the procedures established by law which directs that an every six month appraisal must be made to calculate the value of the lands. *El Universal*. 25/April/11.

American Airlines will not invest in Mexicana.

TG Group had advised that American Airlines has confirmed its participation in the project and was only determining the amount of capital to be incorporated. Yet, American Airlines rejected the possibility of investing in Compañía Mexicana de Aviación, claiming that TG Group declarations regarding this matter are completely false, and very unprofessional. *Excelsior*. 27/April/11.

Senate calls on the Executive to inquire about the Mexicana bankruptcy process.

The Senate calls on the Executive to inquire about the possible responsibilities of the Secretary of Labor, Javier Lozano and the Secretary of Communications and Transportation Juan Molinar Horcasitas deriving from the bankruptcy process that Mexicana is currently going through. Investigations must be made. *El Universal*. 29/April/11.

In this month extract was prepared by Jessi Saba, Vera Garcia and Samantha Garnica.

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