

COELUM

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The continuing need to adopt new
declarations to the Cape Town Convention.

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and amendments to the Airports Law.

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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.

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The continuing need to adopt new declarations to the Cape Town Convention.

A status report on the discussion process.

by Carlos Sierra.

In many prior occasions we have discussed the requirements that need to be addressed in relation to the Cape Town Convention and the ratification in respect thereof of the new declarations that would make this convention and its corresponding protocol compliant with the 2011 Aircraft Sector Understanding (ASU) Issued by the Organization for Economic Cooperation and Development (OECD). As the months and years go by it becomes more clearly established that the ratification of the Cape Town Convention in consistency with the aforesaid declarations is becoming a condition, not only to have access to more beneficial terms of financing with the now more clearly defined discounts that are referenced in the 2011 ASU, but eventually to be eligible at all for export credit and to access the capital and commercial markets that are increasingly looking at this requirement as part of the *prima facie* analysis of any financing structure.

On November 28 of 2012 a well attended meeting was held in Mexico City under the auspices of Aeropuertos y Servicios Auxiliares, which is the entity that controls a number of government run airports in Mexico in addition to fuel supply at all airports throughout the nation and of the Air Transport Chamber, which groups all Mexican concessionaires of air transport in addition to the principal foreign passenger and cargo air carriers that operate to Mexico. This event was also supported by the Aviation Working Group, which groups the principal manufacturers of aircraft and aircraft engines in the world in addition to the most important aircraft leasing companies and financial entities. The event was able to emphasize the importance of re-opening the discussion of the instruments in question to procure the adoption of the declarations recommended by the ASU. The large orders of aircraft placed by AeroMexico and Volaris in 2012, for instance, and the need that these aircraft will have to be financed should place paramount importance on this issue as it could result in substantial savings for both airlines if the required declarations are amended accordingly and if this effort is conducted within the following months.

“Substantial effort has been placed by the Aviation Working Group and by various participants to propose the form in which the required declarations can be modified and adopted successfully by Mexico.”

Substantial effort has been placed by the Aviation Working Group and by various participants to propose the form in which the required declarations can be modified and adopted successfully by Mexico. It is expected that the new federal administration of President Enrique Peña Nieto will show interest in this process and will hopefully, participate actively in the attention that this matter needs for the benefit of the Mexican aviation industry. A summary of these efforts is below. This summary has been submitted only a few days ago for consideration by the new federal government authorities:

“The Convention on International Interests in Mobile Equipment and its protocol in relation to Aircraft, in force in our country since 1 November 2007 intend to provide legal certainty to the right of ownership, prompt recovery of the asset and cancelation of registered rights in case of insolvency or breach by the debtor of any contract through which possession has been transmitted or an international interest in respect to or for the acquisition of aircraft has been constituted. Owing to its high value, the legal certainty that these conventions intend to reach diminishes the legal risks for the creditor and consequently the costs associated to the financing of said assets through discounts granted by the export credit agencies of the various financing states and through the easier access to the capital markets by operators and airlines under preferential conditions that facilitate the acquisitions of equipment of the latest technology. In the case of Mexico, however, said instruments have not satisfied the expectations for which these were ratified in due course by the Senate of the Republic for not being consistent, said ratification, with the guidelines of the Organization for Economic Co-operation and Development (OECD) contained in the Aircraft Sector Understanding that determines the adoption of certain declarations by the contracting states as a condition to access the above referred discounts. At the time of its ratification, Mexico adopted declarations that not only do not comply with the guidelines of the OECD, but which result even more protectionist than the ones adopted by the more than fifty four states that at the moment have ratified said instruments, among which are countries with civil law systems that are similar to Mexico such as Brazil, Colombia and Panama, among others. The adoption by México of the declarations stated by the OECD is possible through the ratification by the Senate of the Republic at initiative of the Federal Government modifying the originally adopted declarations, mechanism that is contemplated in the international conventions previously referred even when such have been previously ratified. As of this date a project exists of the new declarations and qualified opinions have been obtained that confirm the constitutional viability of their ratification. The adoption of the new declarations has been discussed by diverse members of the national aviation sector and counts with the support of the National Air Transport Chamber and of the principal Mexican concessionaires of air transport services. Said adoption would undoubtedly result in a substantial increase in the competitiveness of the Mexican aviation industry.”

“Mexico adopted declarations that not only do not comply with the guidelines of the OECD, but result even more protectionist than the ones adopted by more than fifty four states that have ratified to Cape town Convention.”

It is imperative then that the purpose described above can be inserted in the review of the new comprehensive Mexican aviation policy that this new administration will hopefully implement during the coming years. The Mexican aviation sector needs to be treated preferentially in the international markets in order to increase its competitiveness. The requirement to amend the existing declarations cannot be reiterated enough. We will continue to insist on the need to implement these changes and will continue to discuss this with the government of Mexico and with the Mexican Congress in the hope that an initiative can be prepared and sent to the Mexican Senate for its review and ratification as soon as possible.

Mexico could not benefit enough from the positive results that this process could produce.

Important aspects to the proposed reform and amendments to the Airports Law.

by *Alejandro Lavat*.

In this edition of Coelum we will explain the amendments approved by the Chamber of Deputies to amend the Airports Law. This was done as a consequence of aspects resulting from improper regulation or unforeseen areas, resulting in a wide discretion given to the authority. The reform was approved by Congress and is only pending the review and approval of the Senate to be approved and published.

It aims to introduce attributions to the Ministry of Communications and Transport as the airport authority, who shall have the following attributions, subject to those granted to other units of the federal public administration. These to plan, develop and establish policies and programs for the development of the national airport system while ensuring competition and the continuing development of all service providers according to the country's needs, and to encourage the proper operation of civil aviation.

The Ministry will also establish air traffic rules and the general rules for setting takeoff and landing schedules and priorities and will seek continuity in the service of individual air carriers, with fairness, competition and opportunity in the allocation of time among all carriers.

In looking for better conditions for the development of the sector, while ensuring better performance and raising the competitiveness of the aviation sector, the following amendments are proposed:

With respect to Article 6¹, the proposal aims to establish rules and a general base for the use and exploitation of takeoff and landing times, since the current rules have generated discretionary actions and a poor legal certainty. The article, once amended, will establish periodic checks to verify that the provision of airport services conforms to the provisions of the law.

With respect Article 11², the proposal intends to give the Ministry the ability to grant or refuse a concession, taking into account areas of sovereignty, national security, or when the interested party does not comply with the technical specifications or minimum security of the airport. It also includes the obligation of the Ministry to request the Federal Competition Commission's opinion of any proposal, which must be taken into consideration.

1.- Article 6.- The Ministry, being the airport authority, will have the following attributions, without harming the attribution other government institutions of the federal administration. I. To plan and establish the politics and programs for the development of the national airport system, ensuring the competence and continuity of the growth of all service providers according to the needs of the country, as well as the proper operation of civil aviation; II. and III. ... IV. Establish the air transit rules and the general basis for the scheduling of takeoff and landing, as well as the priorities of shift of aircraft, which will seek the continuance in the provision of service of each of the carriers, equity, competition and opportunity in the allocation of schedules between all the participants of the air transport; V. to VIII. ... IX. Ensure that the dealers and permittees of airfields in service to the public and the general service, provide airport and complementary services, in accordance with this Law, the Civil Aviation Act, the International Treaties on the subject signed by Mexico, the Regulations and other applicable provisions. The Ministry will carry out regular verifications to make sure that the provision of airport services and complementary as laid down by this Law, the Civil Aviation Act, the International Treaties on the subject signed by Mexico, the Regulations and other applicable provisions; X. Get the Mexican Aeronautical Register to include the inscriptions related to civilian airports; XI. Impose appropriate sanctions for non-compliance to the provisions of this Law; XII. Interpret this Act and its regulations for administrative purposes, and XIII. The other which give this Law and other legal systems.

2.- Article 11.- I. to IV. ..., V. ..., a) and b)... c) That meets the technical requirements of safety and environmental legislation; d) That has the technical and administrative personnel trained, and e) That is legally required to provide airport services and complementary, in accordance with this Law, the Civil Aviation Act, the International Treaties on the subject signed by Mexico, the Regulations and other applicable provisions; VI. The Ministry, within fifteen working days from the deadline for receipt of proposals, may request to the Federal Commission of Economic Competition to emit the opinion referred to in article 33 bis 1 of the Federal Law on Economic Competition; VII. The Ministry shall deliver the ruling based on the comparative analysis of the proposals received, which will be given to all participants; VIII. The Ministry, if necessary, will grant the concession within the term specified in the corresponding bases, and an extract from the respective title will be published in the Official Gazette of the Federation at the expense of the dealer, and IX. The concession will not be granted when the proposals do not provide the best conditions for the development national airport; do not comply with the requirements of the bidding rules, as well as with the technical specifications or airport security or by causes that could affect the sovereignty and national security; or the economic proposals that, in his case are presented, are not considered satisfactory by the Ministry. In those scenarios, the bidding will be declared void, and a new call may be issued.

The amendments proposed for Article 15³, provide for concessions to be awarded up to a period of fifty years, and may be extended, in one or several occasions for periods not exceeding fifty additional years, prior favorable opinion of the Inter-ministerial Commission.

Is important to promote the development and increase of airport capacity and better quality air transport of passengers and cargo, and to the extent possible, to modernize and expand the infrastructure with liberty and economic efficiency. This must be done by promoting competition between airports in the regional market to attract specific types of traffic and attract service providers to establish their operational base or logistical connections.

With respect Article 23,⁴ to the proposal adds measures to prevent alleged simulations by persons or groups of persons acquiring concessionaires or permits that contravene competition laws or where foreign investment is made in a proportion contrary to the provisions of the Foreign Investment law. In this case, the Ministry who issues the corresponding authorization must be notified.

Moreover, it is being considered to include in Article 25, Section VIII, within the element that should contain the titles of concession or permit that “The services provided to the dealer or permit holder, shall comply with this Law, the Civil Aviation Act, the International Treaties on the subject signed by Mexico, the Regulations and other applicable provisions”⁵.

“...concessions will be awarded up to a period of fifty years, and may be extended, in one or several occasions for periods not exceeding fifty additional years...”

In the case of Article 27, it is being considered to include the grounds for revocation of licenses and permits within the next three sections: “XIV. Execute or omit acts that prevent or tend to prevent the action of other service providers that have the right to do this, as well as authorities exercising powers within the civil airfield; XV. Limit the number of providers of complementary services or deny its operation through acts of simulation, for reasons other than those covered by article 57 of this Law, and XVI. In general, any breach of the obligations or conditions set forth in this law, its regulations and in the title of respective concession or permission, provided that the failure has imposed a sanction, and this has been firm in terms of law.

In the case of Section VII to the XVI, the Ministry can only revoke permission when previously sanctioned to the respective concessionaire or permit holder, when an infraction has occurred at least three times, based on the grounds provided for in Section ”.⁶

3.- Article 15. Concessions are awarded up to a period of fifty years, and may be extended, in one or several occasions for a period not exceeding fifty additional years, whenever the dealer has complied with the conditions laid down in the respective title and count with the favorable opinion of the Inter-ministerial Commission referred to in article 21, and the request is filed before the start of the last five years of the duration of the concession, and accept the new conditions established by the Ministry.

4.- Article 23. When any person or group of persons acquire, directly or indirectly, through one or more operations of any nature, simultaneous or successive, the control of a society or concessionaire of a civil airfield, it is required to notify the Ministry, who, may issue the corresponding authorization within a period not exceeding thirty working days. If after the aforementioned period the Ministry has not had issued a resolution, the affirmative should be interpreted.

5.- Parliamentary Gazette, year XVI, number 3669-IV, Tuesday Dec. 18, 2012, draft decree amending and supplementing certain provisions of the Airports Law Article 25.

6.- Parliamentary Gazette, year XVI, number 3669-IV, Tuesday Dec. 18, 2012, draft decree amending and supplementing certain provisions of the Airports Law Article 27.

With respect to the amendment to Article 46, the proposal states that in accordance with applicable provisions and based on the concession or license corresponding to the concession holders to ensure that civilian airports have infrastructure facilities, equipment, signaling, first aid module emergency medical services and appropriate organizational systems sufficient for the operation and customer services that are conducted on the basis of safety, efficiency and quality, the above in compliance with the provisions of the Airports Law and the Civil Aviation Law, International treaties and other applicable regulations, the above to remain the levels of care and safety and domestic and international airports.

In connection it Article 63, the proposal keeps the current text of the first paragraph and adds as second paragraph, only the designation of the schedules for determining what is subject to the Ministry of Communications and Transport, as stipulated in the Regulations⁷.

Lastly, the amendments proposed to Article 81 provides that, if any of the violations described in such article is incurred two consecutive times, the Ministry of Communications and Transport may impose a penalty of up to twice the stated amount.

It is very important to mention that the House members approved the amendments to the Airports Law unanimously, with 432 votes to establish measures to ensure fairness, competition and opportunity in allocating time among air transport participants. Now we are only waiting for the changes to be approved by the Senate.

After studying the proposal to amend and modify different parts of the Airports Law, we can conclude that the proposal will encourage more investment in this sector and will increase economic capacity, ensure better performance, and raise the competitiveness of the aviation sector. This in turn will promote regional integration and an increase in the supply of air services, eventually resulting in better rates and more efficient services.

7.- Article 63.- In the airports, the airport administrator or the person that the concessionaire may designate in order for such effects, shall determine the schedules of landing and take-off and the priorities of shift of the aircraft in accordance with the rules that set the respective regulation under equitable criteria and non-discriminatory hearing the Committee's recommendation of operation and schedules referred to in article 61 of this Law. The criteria and procedures for the designation by the dealer of a third party, for the determination of schedules of landing and take-off, shall be subject to the provisions of the Regulation.

SCT issues a NOM about aircraft security.

The Ministry of Communications and Transport published an Official Mexican Norm (NOM-064-SCT-3-2012) which establishes the specifications about the Safety Management System (SMS). The objective is to maintain the levels of security on the aircraft and in operations, and to protect the physical integrity of the users and their goods. *Economista. 07/January/13.*

ASUR Passenger traffic grows 8.7%.

The Southern Airport Group (ASUR), reported a growth of 8.7% when compared to December 2011. In a report sent to the Mexican Value Market, ASUR, which operates nine air terminals in Mexico, registered 1,810,068 passengers in 2012, and 1,664,821 passengers in 2011. ASUR operates the airports of Cancun, Merida, Cozumel, Villahermosa, Oaxaca, Veracruz, Huatulco, Tapachula and Minatitlan. *Economista. 07/January/13.*

GAP foresees more passengers & higher incomes.

For 2013, the Airport Pacific Group (GAP) estimates an increase between 7% and 8.5% on its total income, with an increase in passenger traffic of between 4.5% and 5.5%. In a notice sent to the Mexican Value Market, GAP which operates 12 airports in the country said that they also foresee an increase of between 6% and 7% on its income for aeronautical services and 10.5% to 13.5% on the non aeronautical services. *Reforma. 15/January/13.*

Boeing ensures that the 787 Dreamliner is safe.

The president and CEO of Boeing, Jim McNerney, gave assurances that the 787 Dreamliner aircraft is safe. In words of the president “We are sure that our 787 aircraft is safe, and we completely support it. We are going to take all needed measures over the next days to assure to all our clients and the traveling public that the security of the 787 is in order and to put the airplanes back into service”. This was after the FAA required all operators of Boeing 787 in the United States to temporary cease operations and recommended that other countries to do the same. *Universal. 17/January/13.*

Mexico will have the lowest price hikes in Latin-America.

Mexico could register the lowest increase of air rates this year in all of Latin America, with a rise between 2% and 5%, which is less than the estimate for this region of between 4% and 7%. It is expected however that Latin America as a whole will have the greatest increase in rates when compared to North America, Europe, Asia and Africa. This increase is headed by Brazil and Argentina with increments of almost 10%. *El Financiero. 23/January/13.*

In this month extract was prepared by Jessi Saba, Raúl Barrios, Mauricio Castillo and Diego García.

Mexico's National Airlines Increase International Passengers.

From January to November 2012, Mexican airlines reported an increase of international passengers of up to 21.4% compared to the same period in 2011. The increase is reflected from 2,205 million passengers in 2011 to over 2,676 million this past year. Interjet stands apart from others, with an estimate increase of 900% in this category, with approximately 150,000 more passengers. *Reforma. 28/January/13.*

Award Given to Cancun International Airport.

The American Association of Airport Executives (AAAE) gave an award to Cancun International Airport in recognition to the quality of the training given to its workers. "We are pleased to be among the 70 airport groups that have received this award. This means that our operations are being managed by employees that are among the best qualified in security and preparation" said Carlos Trueba, Head Director of Cancun International Airport. *Reforma. 29/January/13.*

GAP Get's Ready for Bi-National Airport.

More than a decade after the plan was presented, the Bi-National Airport between Tijuana and San Diego is finally ready to begin operations in mid 2014, according to the Pacific Airport Group (GAP). The airport will have a building in the USA which will be connected through a bridge to the Tijuana International Airport. The main goals are to decrease San Diego's airport traffic, which is currently operating over its planned capacity; as well as to promote the use of the Mexican airport. *Reforma. 30/January/13.*

Airlines have 35% Less Operations than Six Years Ago.

The Pilot Association Union (ASPA) reported that currently Mexican airlines have an estimate 35% less international operations that when Felipe Calderon first took office as president. Statistical reports from IATA and DGAC showed that even though Mexican airlines have fewer operations, international operations are growing at an impressive 29.5% annually. This shows that the potential market was there, but, just not being exploited by national companies. *Reforma. 31/January/13.*

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