

# COELUM

Monthly Digital Publication by  
ABOGADOS SIERRA Y VAZQUEZ

Photo by Carlos Sierra

November 15, 2014 year 09 | No. 07

The Apparent Irregularities  
between Aircraft Registration  
and Display Marks.

by Jessi Saba  
P. 01-02

OCTOBER NEWS on  
Mexican Aviation  
P. 03-04

Contributors  
P. 05

ABOGADOS  
SIERRA Y  
VAZQUEZ

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.

# The Apparent Irregularities between Aircraft Registration and Display Marks.

by Jessi Saba.\*

It is common knowledge that aircraft must bear the appropriate nationality and registration marks in order to legally operate. However, it appears in occasions that such a simple process and documented procedure may result in apparent contradictions between the registry bestowing nationality on an aircraft and the display marks on factual terms. The real analysis to be made resumes in the possibility of an aircraft displaying marks that do not truly reflect the actual aircraft's situation, in specific, when an aircraft bears a foreign registration mark and nonetheless displays on its airframe a Mexican flag.

*"...apparent contradictions between the registry and nationality of an aircraft in factual terms."*

In order to understand the issue, it is imperative to analyze the situation on two general levels. First, on an International-Treaty Regulation analysis and secondly on a Mexican domestic regulation approach. When analyzing the International applicable regulations and directives, we are to remit ourselves to the Convention on International Civil Aviation signed at Chicago on December 7th, 1944 (the "Chicago Convention"). Restricting the analysis, it is critical to relate and understand the domestic regulations in Mexico concerning the application to the nationality, registration and display marks to understand the implications derived from a displaying a flag on the vessel distinct to its registration mark as *a de facto* situation.

The Chicago Convention has as its purpose, the confirmation and setting up of certain principles and arrangements to allow international civil aviation to develop in a "safe and orderly manner"<sup>1</sup>. The Convention among other things, established two principal components to which the standardization of aviation regulations apply. Therefore, limiting its scope of application exclusively to civil aircraft<sup>2</sup> and always respecting the utmost principle of "complete and exclusive" sovereignty over airspace.<sup>3</sup>

However, the true regulations that pertain to the issue are found under Chapter III of the Chicago Convention, specifically Article 17 regarding Nationality of Aircraft, which reads as follows: "*Aircraft have the nationality of the State in which they are registered*".

The above cited article details that an aircraft is granted nationality by registration and it is, the state where the registry is made who grants the nationality. Therefore, attending to a literal interpretation of the norm, it is exclusively the state who grants nationality based exclusively on the registry, independent to the physical situations of markings, location or state of the aircraft.

Article 18 of the Chicago Convention proceeds to the matter of dual registration of an aircraft, stating that "*An aircraft cannot be validly registered in more than one State, but its registration may be changed from one State to another*".

## \* IN COLABORATION WITH MIGUEL RUELAS

1.- Preamble of the Convention on International Civil Aviation, signed at Chicago on December 7, 1944.

2.- Article 3(a) of the Chicago Convention

3.- Article 1 of the Chicago Convention

This Article proves that the registration is exclusive and limited to one State, and no aircraft may be registered in two different nations, as it would grant two nationalities to the aircraft. However, it is important to notice that the registration may be changed from one state to another. Again, the regulation limits itself to describe the registration, and not the markings or display marks on the aircraft. There is no express international regulation that pretends to establish coherence between the display marks on a vessel (the flag) and the registration mark.

It is at this moment when it is relevant to describe and analyze the applicable Mexican Law and its interpretation in order to fully comprehend the situation. Article 44 of the Civil Aviation Law establishes the following: *“Any civil aircraft shall bear the distinctive marks of nationality and registration mark. Furthermore, Mexican aircraft must bear the national flag. The registration marks for nationality on civil aircraft are as follows: XA for public air transport; XB for private services and; XC for State Aircraft, different to those of the military. Civil Aircraft have the nationality of the State in which they have received a registration mark”*.

As we interpret the above cited article we may conclude that, exclusively Mexican aircraft must bear the national flag, and that the nationality of the aircraft is granted by the state that bestowed the registration mark. However, we affront two interpretative contradictions: First, with the Mexican Supreme Court’s criteria on aircraft nationality and second with the Obligatory Circular Letter of the General Directorate of Civil Aviation.<sup>4</sup>

The Supreme Court has held on a thesis that “ the principle of territoriality or right of homeland, considering as a projection of the territory ship vessels and aircraft”, although the cited criteria does not establish a direct reference to flag display marks, what would happen if someone is born on an aircraft with foreign registration mark and a Mexican flag? Would the registration of the Aircraft prevail over the flag displayed? We consider to be so.

However, considering the Obligatory Circular Letter, article 2.2 establishes: *All civil aircraft of concessionaires, permit holders or aerial Mexican operators must bear the National Flag*. Therefore, upon a strict interpretation of the norm, all aircraft property of the described subjects must, independent to whatever registration mark they bear, must also bear the national flag. However it is imperative to notice that such can only occur if the concessionaire, permit holder or operator is in fact owner of the aircraft, excluding the possibility of bearing a Mexican flag on an aircraft with foreign registration mark for those under a lease, a title reservation agreement or any other legal situation that only grants possession to the described subjects.

To conclude, the articles and criteria described above might be interpreted in different ways, giving rise to some apparent contradictions between the nationality of an aircraft and the registration it bears, and therefore explain why some aircraft bear a foreign registration mark and a Mexican flag on the airframe, but it is imperative to fully understand that it is only the registration mark that grants nationality, regardless of any other marks that the aircraft might bear.

4.- An Obligatory Circular Letter is a binding by-law produced by the Mexican Federal Administration in accordance with the Centralized Public Administration dependent of the Executive Power and authorized by the Constitution. In this case we refer to the Obligatory Circular Letter number CO AV-45/07 titled “ Obligatory Circular Letter that established the Characteristics of the Nationality Marks and Registration Mark for Civil Mexican Aircraft”.

## **Airbus Backs Aerion To Take AS2 Supersonic Business Jet to Market.**

Aerion's long-awaited AS2 supersonic business jet (SSBJ) program received a major boost last month when Airbus signed up for a partnership involving an exchange of knowledge and capabilities in design, manufacturing and certification. According to Aerion, the collaboration will support the Mach 1.6, \$100+ million AS2 through to certification. Although the industrialization plan for the new jet has still to be confirmed, the Reno, Nev.-based group said that this will happen "over the course of the next year" and confirmed that it is no longer searching for a manufacturing partner. *AInOnline. October 01, 2014.*

## **Mexico Relaxes APIS Requirements.**

Mexico recently relaxed its advanced passenger information system (APIS) manifest filing requirements offering the option to file manifests directly without using a third-party provider. In an effort to curb ongoing cabotage violations, Mexico expanded the APIS filing requirement to general aviation operations on Jan. 1, 2014, and at that time only accepted submissions from flight planning providers. While Mexico continues to develop a public portal allowing for direct Internet submissions, the Instituto Nacional de Migración now accepts APIS manifests filed directly by aircraft operators for flights arriving in or departing from Mexico. *National Business Aviation Association. October 06, 2014.*

## **Mexicana Airline assets start to be sold.**

The liquidator of former airline Mexican de Aviación, Alfonso Ascencio has finally started to sell assets of the bankrupt airline. The liquidator has stated that it has sold several of the airline assets that were located outside of Mexico, like Cuba and Canada. The information was corroborated by Giselda Nieblas, director of the Federal Institute of Experts in Insolvency Proceedings. Mrs. Nieblas stated that with this sell, the liquidator begins the process of selling assets in order to respond to over 8,500 works that have been left unemployed after the airline ceased operations. The liquidator has officially submitted to the corresponding court, the list of assets to be sold, although it remains confidential. *prodigy.msn.com. October 27, 2014.*

## **Ebola as prime aviation threat.**

Director of National Intelligence James Clapper of USA stated on an aviation security conference, that the prime concern, even that over terrorist threats and air weapons targeting commercial flights in warzones, is Ebola. Clapper told the 23rd annual "Av Sec World" aviation security conference sponsored by the International Air Transport Association that "we're very open to working with you to find solutions to prevent a West African epidemic from turning into a global pandemic." Finally he reiterated the importance of Ebola aviation control as he stated: "I've spent more time and energy on Ebola than most people would think a DNI would. It's not the sort of thing we spy on, but nevertheless there are intelligence implications of Ebola as well." *http://blogs.rollcall.com/ October 27, 2014.*

## **IATA launches Aviation Cyber Security Toolkit.**

The International Air Transport Association (IATA) launched its Aviation Cyber Security Toolkit which helps the air transport industry, including airlines, airports and air traffic management, to identify, assess and mitigate, among others, cyber risks in IT infrastructure across their operations. “The aviation industry depends on essential IT infrastructure functioning reliably. While the industry has put in place best practices to protect its IT infrastructure, the threat is ever-evolving. The Aviation Cyber Security Toolkit provides guidance to help airlines and their partners stay one step ahead of those with intent to do harm through cyber-attacks” said Carolina Ramirez, IATA’s Global Director of Aviation Security and Facilitation, at the AVSEC World conference in Washington, DC. *IATA. October 28, 2014.*

## **IATA: Government Assets Needed For Conflict Areas Intelligence.**

International Air Transport Association (IATA) officials say airlines require the caliber of state-acquired intelligence to decide when and where aircraft should not be flying. ICAO and IATA also have an ongoing task force investigating ways for airlines to better track their aircraft, a group convened after the disappearance of Malaysia Airlines Flight MH370 on Mar. 8, 2014. The tracking task force made its first report to ICAO earlier this month, with officials saying that the near-term plan continues to be for airlines to use equipment already on board to enhance tracking over oceanic and remote areas. *Aviation Week. October 28, 2014.*

## **Etihad, Lufthansa and EU Nationals Control.**

Germany’s federal aviation authority, LBA, on 16 October 2014 reversed a decision to cancel 34 code share flights of Etihad and Airberlin that was taken a few days earlier. The reason for the earlier cancellation was that these code share flights violated the traffic rights agreement between Germany and the UAE. A meeting later in the month between both governments to discuss the bilateral will clarify things for the future. Lufthansa blames these code shares for the overcapacity on the Abu Dhabi route and called them unjustified. *Aviation Week. October 28, 2014.*

## **FAA Awards \$10.2 Million in Environmental Grants to Airports.**

U.S. Transportation Secretary Anthony Foxx recently awarded \$10.2 million in FAA grants to six airports around the country to reduce emissions and improve air quality through the FAA’s Voluntary Airport Low Emission (VALE) program. VALE is designed to reduce all sources of airport ground emissions in areas of marginal air quality. The FAA established the program in 2005 to help airport sponsors meet their air quality responsibilities under the Clean Air Act. Through VALE, airport sponsors can use Airport Improvement Program (AIP) funds and passenger facility charges to help acquire low-emission vehicles, refueling and recharging stations, gate electrification, and other airport-related air quality improvements. *October 28, 2014.*

# COELUM

Monthly Digital Publication by  
ABOGADOS SIERRA Y VÁZQUEZ

## CONTRIBUTORS

### Jessi Saba

Attorney at Law: Admitted to practice law in 2012. Mrs. Saba, of Mexican nationality obtained her law degree at Universidad Iberoamericana, Mexico City.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Aviation Law, Aircraft Contract Law, Corporate Law.

e-mail: [jsaba@asyv.com](mailto:jsaba@asyv.com)

ABOGADOS  
SIERRA Y  
VAZQUEZ

Prol. Reforma No. 1190 25th Floor  
Santa Fe México D.F. 05349  
t. (52.55) 52.92.78.14  
f. (52.55) 52.92.78.06  
[www.asyv.com](http://www.asyv.com) / [www.asyv.aero](http://www.asyv.aero)

The articles appearing on this and on all other issues of Coelum reflect the views and knowledge only of the individuals that have written the same and do not constitute or should be construed to contain legal advice given by such writers, by this firm or by any of its members or employees. The articles and contents of this newsletter are not intended to be relied upon as legal opinions. The editors of this newsletter and the partners and members of Abogados Sierra y Vazquez SC shall not be liable for any comments made, errors incurred, insufficiencies or inaccuracies related to any of the contents of this free newsletter, which should be regarded only as an informational courtesy to all recipients of the same.