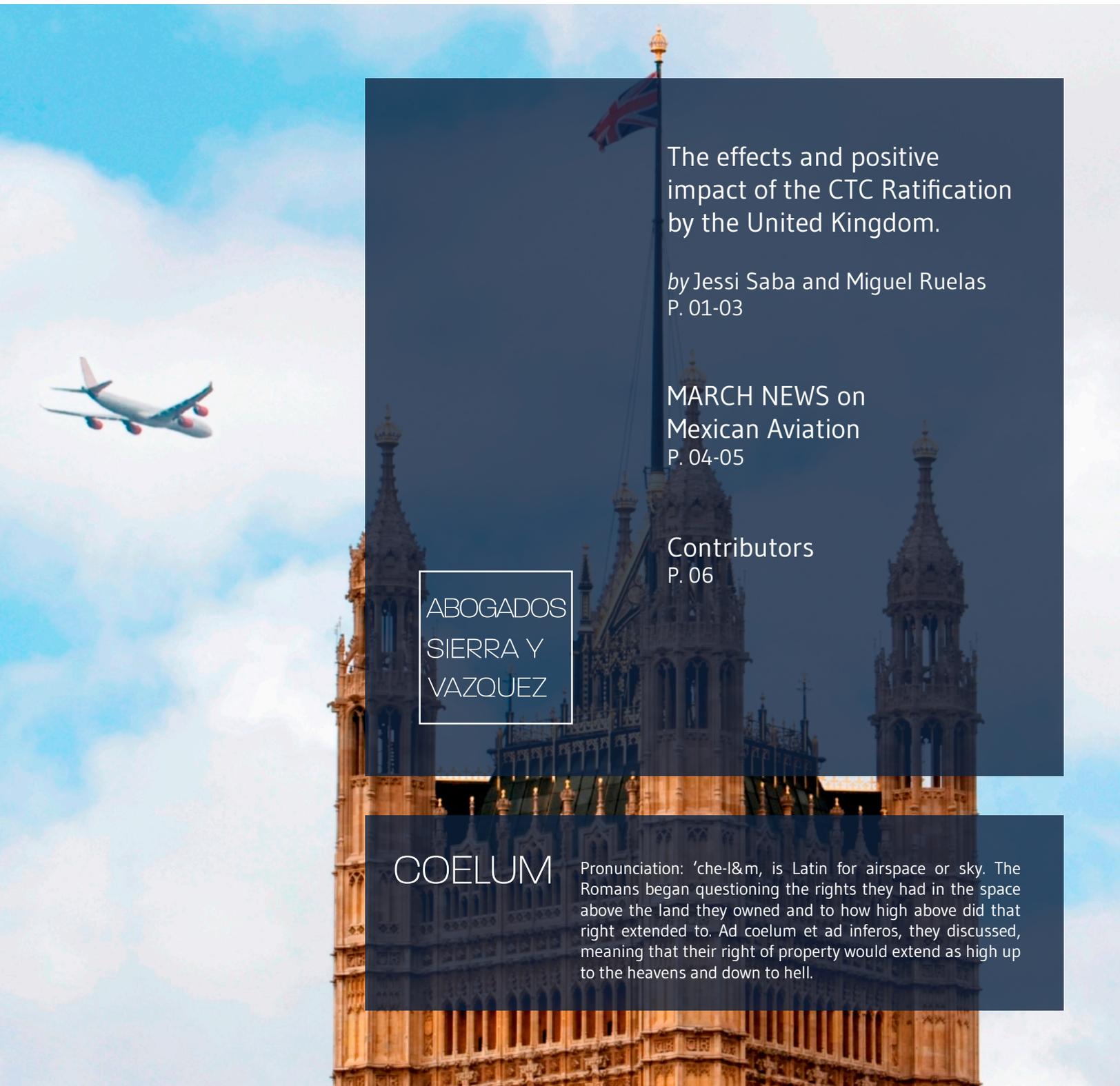


# COELUM

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The effects and positive  
impact of the CTC Ratification  
by the United Kingdom.

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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.

# The effects and positive impact of the CTC Ratification by the United Kingdom.

by Jessi Saba and Miguel Ruelas

The European Union ('EU') ratified the Cape Town Convention and its Aircraft Protocol (together, 'CTC') in April 2009, and it entered into force in August of that same year. Nevertheless, this did not mean an automatic accession/ratification for member states, making it necessary for each member of the EU to ratify the CTC on its own terms under the Regional Economic Integration Organization (REIO). This means that the EU set forth the required basis for any of its members upon ratification of the Treaty thus limiting the margin under which member states can make CTC declarations. The areas where the EU competence limits member states' declarations are: choice of law, jurisdiction and insolvency provisions governed within the union by the EU Insolvency Regulation.

To date, only the following members of the EU have ratified CTC – Ireland, Latvia, Luxembourg, Malta, the Kingdom of Netherlands, and Spain<sup>1</sup>. Though it is important to mention that CTC has been ratified by 57 countries around the globe, making it one of, if not the most successful treaty on international commercial business law. Therefore, the lack of ratification by EU member states has drawn the attention of other non-member states that are considering ratification. The non-membership of CTC of EU members of tremendous and substantial economic power world-wide, may be one of the biggest reasons why other non-CTC members are apprehensive of it. Efforts have been intensified in order to get more European countries to ratify CTC as it would certainly be beneficial to all players in the industry.

A big step by the United Kingdom might be the key to changing the number of ratifications within the EU member states and considerably reduce the skepticism of other states worldwide that are dubious about endorsing the CTC. The UK government is firmly committed on ratifying the CTC. The UK established a well set out and thoughtful structure in order to understand and consider the qualitative benefits that the CTC could offer. In that sense, the UK ran certain consultation processes, in which they would request the views from the aviation industry on how the UK should implement CTC.

The discussion centered on three principal aspects. Firstly, on the declarations relevant to non-consensual rights under article 39, and the Alternative A, a 60 day waiving period. Secondly, the Blue Sky rule for which mortgages are created under English law<sup>2</sup> and its alleged incompatibility with the CTC, and thirdly, on the Aircraft Sector Understanding of the OECD discount rate and the offset that the Home Countries Rule<sup>3</sup> may pose to it.

1.- Spain ratified the Cape Town Convention only on 28 June 2013. The Aircraft Protocol has not been ratified.

2.- The Blue Sky rule, set forth in *Blue Sky One Limited & O'rs Vs, Mahan Air (2010)* establishes that for a valid security interest to be created under English law, the aircraft must necessarily be located in the U.K at the time of its creation.

3.- Since the UK is one of the home countries to the assembly line of several aircraft manufacturers, the Home Countries Rule limits the export credits benefits for those aircraft.

The process described above was carried throughout 2014. The final consultation closed on 15 March 2015<sup>4</sup>, in which the UK government asked all relevant parties, such as airlines, manufacturers, banks, leasing companies, and legal firms to provide views on the proposed declarations to be made by the government and the economic analysis before depositing the ratification instrument before UNIDROIT.

*“A big step by the United Kingdom might be the key to changing number of ratifications within the EU member states and considerably reduce the skepticism of other states worldwide that are dubious about endorsing the CTC.”*

The position officially released by the UK on CTC includes all Qualifying Declarations as stated in the Aircraft Sector Understanding<sup>5</sup>. The UK government has not provided a firm timing on ratification though it is expected to happen in the next couple of months.

Ratification of CTC by the UK will have a tremendous impact around Europe, where CTC is lacking force. It is expected, that with this big step, other countries will join the CTC, such as Germany, France, and Poland, among others in a ripple like effect. UK's ratification will certainly have a greater impact on other countries and regions of the world, as one of the big questions revolved around the non-ratification of European countries like the UK that represents, on its own, 17% of the aerospace global market share.

Not only will UK ratification influence other countries by promoting ratification, but it will also set forth a precedent on ratifying with the Qualifying Declarations that translate into all the economic benefits for the parties. It will cause a quantitative and qualitative effect, as more countries will be looking forward to ratify the CTC, and have a correct implementation.

The UK will set forth an example on how to resolve national law issues necessary to adapt to the CTC, how to obtain the maximum benefit therein and catalyze even further the success of the CTC, but this time with the inclusion of those most missed by the aeronautic industry and transaction entities in the CTC, the EU member states.

*“Not only will UK ratification influence other countries by promoting ratification, but it will also set forth a precedent on ratifying with the Qualifying Declarations that translate into all the economic benefits for the parties.”*

4.- <https://www.gov.uk/government/consultations/international-interests-in-mobile-equipment-convention-aircraft>

5.- <http://www.oecd.org/tad/xcred/aircraftsectorunderstandings.htm>

### **Woman heads the Secretary General of ICAO.**

The ICAO board has named for the first time, a woman as secretary general of the organization. Her name is Fang Liu, and she is to take her position of August of this year. Liu will replace Raymond Benjamin which has hosted the position since 2009. Her experience remounts to the Civil Aviation Administration of China and the APEC. She is currently the ICAO representative before the United Nations as she awaits to become Secretary General. *Fsmex.com. March 12, 2015.*

### **Clean Sky Prepares For Helo Diesel Flight Tests.**

Aviation gasoline has been the fuel of choice for lighter aircraft for decades, but with leaded avgas becoming hard to find in some regions and environmentally unacceptable in others, diesel-cycle engines burning jet fuel are gaining ground. While aviation diesels have low specific fuel consumption (sfc), the problem with them has been their power and weight. They have not been powerful enough for use in larger, higher-performance general aviation (GA) aircraft. And power-to-weight ratio has been too low for them to be usable in light helicopters. *Aviationweek.com. March 20, 2015.*

### **2014 the safest year in aviation history.**

Despite 2014 being a year with many fatalities related to aircrafts, it was the safest year in aviation history. Recent statistics given by the IATA (International Air Transport Association) say that from the 38 million flights during last year only 12 resulted in fatal accidents; in other words only one accident in every 4.4 million flights. This statistic, compared to 2013's 16 fatal accidents and 2010's 23 proves how each year it is safer to fly in an airplane. *March 27, 2015.*

### **Nasa Works of Pilot-Proofing Cockpits.**

Due to recent accidents involving pilots deliberately causing aircraft accidents, people have started looking at the idea of implementing new aircraft systems to stop pilots from being able to do this. One of the most important companies to have begun working on these implementations is NASA. The United States government agency have recently begun working on single pilot operations. The way this system would work would be by having one pilot on board the aircraft while having another pilot with the capability to perform a takeover of the aircraft's controls if anything goes wrong. *Aviationweek.com. March 27, 2015.*

### **Tragedy rethinks cockpit rules.**

After the tragic incident of flight 9525 that crashed on France, while on route from Barcelona to Dusseldorf, many airlines have decided to change and rethink their safety standards on the cabin. Several European Airlines and two in North America have already made public, that from now on, the cockpit will at all times have two members in it. Thus, prohibiting that only one pilot is within the cockpit at any time during the flight. Several Civil Aviation Agencies from different jurisdictions are at this time discussing whether a modification to rules and standards is to be made for all airlines. *aerolatinnews.com March 27, 2015.*

### **Aviation Experts Call for ATO Removal.**

During a recent House Subcommittee aviation leaders from all over the world gathered together to discuss the possible removal of the Air Traffic Organization (ATO) from within the FAA. Aviation experts said this is due to the amount of delays that have taken place in various attempts to modernize the organization. Due to the fact that the FAA is government run it is not fit to run like a regular business. To fix this, the ATO would be removed from the FAA and run like a private business. This would hopefully serve to increase income, productivity, and modernize the facilities. *aviationtoday.com March 30, 2015.*

### **Mandatory Instructions for Mexican Airlines.**

Mexican airlines, whether flying domestic or internationally are now obliged to have two persons inside the pilot cabin at all times, as a mandatory instruction from the General Directorate of Civil Aviation (DGAC for its initials in Spanish). The head of DGAC, Mr. López Mayer stated: "When one of the pilots is to leave the cabin, the pilot shall designate one of the crew members to step in the cabin". The decision to establish this rules, as a result of recent one-man created tragedies, will be effective for the airlines as soon as they receive a personal notice from the DGAC, which are expected to be served to all air carriers no later than by the first week of April. *mexico.cnn.com. March 30, 2015.*

### **Mexico City's Airport ready for one of the busiest weeks of the year.**

Mexico City airport is ready for the Spring Break vacations, which are Mexico's busiest holiday season year round. As a result of the elevated number of travelers, Mexico City airport gets ready to face the high numbers of travelers. It is estimated that Mexico City's Airport will transport two million people and 15,000 flights during this two week holiday period. With such tantamount calculations, Mr. Argudín, stated that the "terminal is in permanent alert in order to respond to any eventuality that may put at risk the safe being of airlines, passengers and the terminal itself. Mexico's busiest airport will increase security with 3,000 new security agents, both private and from local and federal police headquarters. *mexico.cnn.com. March 30, 2015.*

### **World's Largest Aircraft Getting Ready for Flight.**

Being called the "future of aviation", the Airlander 10 is finally becoming a reality. Despite still being in the stage where many investors are needed the huge aircraft is reaching its final steps to becoming available for commercial aviation. The aircraft, which is modeled in the shape of an oval, emulates a wing to be able to fly for weeks at a time, land anywhere that's flat, and only a fifth of fuel when being compared to a conventional aircraft. It is set to become the most environmental aircraft ever created. *theguardian.com. March 31, 2015.*

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