

COELUM

Monthly Digital Publication by
ABOGADOS SIERRA Y VAZQUEZ

September 15, 2015 year 10 | No. 05

Photo by: Yndra García

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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.

Jurisdiction for Precautionary Measures based on Cape Town Convention, when the object is Located in Mexico.

by Misael Arellano

In this edition we will make a short analysis of the problems faced by a creditor to obtain a precautionary measure on an aircraft operated in Mexico, in specific, how to determine the jurisdiction of specific Mexican court based on the provisions stated in articles 13 and 43 of Cape Town Convention (CTC). In that sense, we must depart from the fact that the CTC is applicable by the observance of the formal procedures and requirements to be subject to applicability and execution; and that the jurisdiction and governing law is always agreed by all parties involved in any kind of agreement to grant the legal possession of an aircraft and/or its assets to a third party; however, the creditor faces a nightmare before a Mexican court, not to obtain a precautionary measure but to achieve the admission of the claim and the knowledge of the specific case under the argument that it is not clear that such court be entitled by the law to resolve it.

“The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object”.

CTC Legal Basis.

Article 43 section 1 of the CTC states that *“The courts of a Contracting State chosen by the parties and the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object”*. Therefore, if the aircraft is operated by a Mexican carrier in domestic flights; the Mexican courts have the jurisdiction to place a relief in accordance to Article 13 section 1 of the CTC to ensure that a creditor who adduces evidence of default by the debtor may, pending final determination of its claim and to the extent that the debtor has at any time so agreed, obtain from a court speedy relief in the form of such one or more of the following orders as the creditor requests: (a) preservation of the object and its value; (b) possession, control or custody of the object; (c) immobilization of the object; and (d) lease or, except where covered by sub-paragraphs (a) to (c), management of the object and the income therefrom.

The location of the object.

Unfortunately, Mexican courts are not involved nor have the expected knowledge in regards to international treaties subscribed by Mexico in regards to aviation matter; in our specific case, it is difficult to find a judge that even knows about the existence of the CTC. By the previously mentioned, the creditor is required to provide to the judge with the applicable international treaty and describe the specific articles in regards to the petition submitted; and once the right of a creditor has been duly recognized, the first wall is showed by the court: is it a matter within its jurisdiction?

“which is the evidence of the location of the object and/or how the location of the aircraft can be proved to the court?”

If the principle of the “agreement of the parties” is not applicable because the jurisdiction agreed has been addressed abroad e.g. the State of New York; then the CTC terms are analyzed resulting in the observance of the rule stated in section 1 of the Article 43 “Jurisdiction under Article 13” of the CTC “...the courts of the Contracting State on the territory of which the object is situated have jurisdiction to grant relief under Article 13(1)(a), (b), (c) and Article 13(4) in respect of that object.”

That is when the creditor faces the main issue, which is the evidence of the location of the object and/or how the location of the aircraft can be proved to the court.

As a mobile asset per se, when the aircraft, engine or any other mobile equipment is operating, it is impossible for the creditor to provide a “real time evidence” of the location of the object to the court in order to confirm that such mobile equipment is and will be located in a specific place in the following days or even hours.

Supplementary Legislation. Domestic Law.

“in case of precautionary measures will be also competent, in case of urgency, the judge of the place on which the defendant or the property is located. ”

Bearing in mind that the CTC does not provide the specific procedure to define the location of a mobile equipment for the applicability of section 1 of the Article 43, domestic legislation must be supplementary applied. Article 1112 of the Mexican Code of Commerce states that the competent judge for the main business will be the same in cases of detrimental act; in case of precautionary measures will be also competent, in case of urgency, the judge of the place on which the defendant or the property is located. Based on the Mexican Code of Commerce, the location of the aircraft could be also involved for the knowledge and resolution of the court to which the petition was filed; however, there is a reference to the place or domicile of the defendant.

On the other hand, but applicable just to aircraft bearing Mexican registration marks; Article 100 section X of the Regulations to the Civil Aviation Law, states that:

“Article 100. The registration certificate issued by the Secretariat must contain, among other, the following information:

...

X. The operations base of the aircraft.

...”

By the analysis made to the issues in regards to the evidence of the location of the object required by Mexican courts to know and resolve a petition for precautionary measures under the CTC; we can conclude that it is advisable to agree in any kind of agreement granting the legal possession of an aircraft bearing Mexican registration marks and/or its assets to a third party (among any other that could be considered the best for the parties) that the applicable jurisdiction to obtain precautionary measures under CTC, can be defined by: i) the applicable to the legal address of the defendant; ii) the applicable to the address stated in the Air Operator Certificate in which the aircraft will be included to conduct operations in Mexico; or, iii) the applicable to the operations base stated in the Mexican certificate of registration.

Drone Sighting Rise Dramatically.

During 2014 the number of drone sightings by airplane operators was of 238, by August of the current year the number of sightings has increased to approximately 650. The recent rise of popularity during the year may actually prove dangerous for airplane operators. The FAA has made it clear that there should be no operation of drones near airports or hangars. This is due to the fact that drones can cause many malfunctions for airplanes. The result of the increased sightings has been the FAA starting to implement harsher fines and criminal charges including jail time for serious infractions. The FAA hopes these implementations will help stop the operation of drones near airports and hangars. www.aviationweek.com August 15, 2015

Mexico's Aerospace Strength Showcased by Lockheed Deal.

Lockheed Martin and aircraft manufacturer Airbus signed a deal that combined their commercial flight training operations. The new partnership tends to grow in the Mexican aerospace industry, with new full flight simulators scheduled for deployment in Mexico City and Monterrey. High-tech manufacturing is booming in Mexico, and the global aerospace industry is carving out a space in the Mexican economy for design, OEM manufacturing, maintenance and aircraft assembly. www.mexico-now.com August 21, 2015.

Embraer executive Jets delivers first legacy 500 in Mexico.

Embraer Executive Jets has delivered the first Legacy 500 midsize jet to a customer in Mexico. The aircraft will be operated by Transpaís Aéreo, a subsidiary of the Lomex Group Aeronautics Division. The Legacy 500 was awarded type certification from Mexico's Civil Aviation Safety Authority in June, it seems to be a highly capable executive jet because it offers excellent field performance and easy transcontinental range. The Mexican market has played an important role in developing global executive aviation. With the second-largest fleet of business jets in the world, just behind the United States, Mexico's strong business aviation culture highlights the need for a powerful tool that helps decision-makers compete in a marketplace that demands speed, flexibility, efficiency, and productivity. www.mexico-now.com August 21, 2015.

Air France will bring the a380 to Mexico City.

On January 12, 2016 the Airbus A380 which is the largest airplane in the world, will land at Mexico City International Airport (AIMC). The event was announced after the signing of an agreement between the airline and Mexico's General Direction of Civil Aviation (DGAC) during President Enrique Peña Nieto's visit to France. The director of Air France in Mexico, has mentioned some of the conditioning needed at the AICM before receiving the airplane. The investment and conditioning will be announced soon that everything can be ready by December. Currently, Air France connects both countries with a Boeing 747; this aircraft switch will increase the route's capacity. AIMC authorities said that US\$27 million need to be invested in expanding the airport's runways. The only airport in Mexico currently capable of handling the A380 is Cancun. www.worldairlinenews.com August 22, 2015.

TAR Airline Arrives in Juarez City.

A new airline has arrived in the city of Juarez in the north of Mexico. The airline, named Transportes Aereos Regionales (Regional Aerial Transport), is a Mexican airline whose operations started on January 2014 with their operations base being in the city of Queretaro. The airline will begin operation in October of the current year offering flights to the cities of Chihuahua, Culiacán, Hermosillo, and Mazatlán. The airline is expected to provide easier travel for people residing in the north by offering economic tickets. www.puentelibre.mx August 26, 2015.

NASA Crashed Aircraft to Test ELTs.

On Wednesday, August 26 NASA used an odd approach in order to test their emergency locator transmitters (ELTs). ELTs are used in airplane incidents in order to quickly locate the place where the accident occurred and as such must be able to work in the extreme circumstances of an airplane crash. To test ELTs NASA has dropped a Cessna 172 aircraft from a height of 100 feet in order to replicate a severe but survivable accident. The airplane was set with 5 ELTs along with two test dummies. This test, according to NASA will greatly help the ELT system performance for safer airplane navigation. www.aviationnews.com August 27, 2015.

Aerospace boom in Mexico attracts Argentine investors.

The aerospace industry growth in Mexico in recent years has generated the interest of Argentine businessmen seeking for strategic alliances, said Javier Siman, President of the Argentine Aeronautics and Space Chamber (Carae). The Argentine Company Aircraft Factory aims to incorporate Mexican SMEs into the components business. For the Ambassador of Argentina in Mexico, Patricia Vaca, the trade mission will be successful because there is mutual interest between countries to grow. This trade mission plans to hold meetings with representatives of the Ministry of National Defense, Chihuahua Aerospace Cluster and the Economic Development Council of Sonora.

www.mexico-now.com August 30, 2015.

NAICM promotes social growth.

The Mexico City's New International Airport (NAICM) will be an important element for the social growth, due that its construction will have social consequences, it will attract investment, will create new jobs and will improve the environment for the benefit of the City. Yuriria Mascott Pérez, Undersecretary of the Ministry of Communications and Transport, expressed that this project will generate lower costs for economic activity and contributes to improve the quality life of the Mexican citizens. Notably, the NAICM will be one of the largest airports in the world, and will exceed the capacity of the airports of Brandenburg in Germany and Hamad in Qatar. www.mexico-now.com September 01, 2015.

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