

COELUM.

Comments on the CTC Index.
by Vitor Barbosa



MARCH NEWS on Mexican Aviation

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 Convention on International Interest in Mobile Equipment and the Protocol on Matters Specific to Aircraft Equipment (collectively, the “Convention”) were signed on November 16 2001 after a significant period of studies conducted by UNIDROIT (International Institute for the Unification of Private Law) and members of the Aviation Working Group (AWG). The Convention was created due to the inexistence of uniform rules applicable to cross border transactions involving movable assets and designed to provide legal remedies that would consequently result in a more predictable legal framework and more efficient financing conditions with potential to increase the use of modern transport equipment around the world¹.

“All the benefits and better credit conditions created by the adoption of uniform rules by the countries depend on the compliance with the provisions of the Convention.”

The conflict of laws and the legal uncertainty that existed prior to the Convention created a scenario of discouragement by potential investors and financiers from extending credit, which consequently lead to an increase of credit costs and less attractive opportunities to the debtors². In order to create a more favorable commercial environment for both creditors and debtors, reduce the costs associated with the financing of aviation equipment and increase the number of leasing transactions. The experts responsible for drafting the Convention

proposed several provisions with the intention of (i) creating a more predictable legal framework for the parties involved in cross border transactions of aviation equipment³; (ii) establishing default remedies in order to increase the creditors confidence and consequently reduce the financing costs and (iii) creating international interests that would be recognized in all contracting states⁴.

All the benefits and better credit conditions created by the adoption of uniform rules by the countries depend on the compliance with the provisions of the Convention⁵. In order to monitor such compliance by the contracting states, the AWG created an index (the “CTC Index”) that consists of a formula comprised of six variables, which will calculate the score of each country that adopted the Convention. According to the methodology used by AWG, the variables are the following⁶:

Variable A: analysis of the primacy of the Convention over national law and whether the contracting state has or not the necessary legislation related to the full implementation of the Convention;

Variable B: analysis of administrative and judicial precedents related to the applicability and enforcement of the Convention provisions, based on reports prepared by experts of each contracting state;

Variable C: analysis on whether the contracting state should (i) remain eligible for a discount under

1.-Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol – Explanatory Report and Commentary – UNIDROIT – DCME-IP/2 – (page 2) available at <https://www.unidroit.org/english/conventions/mobile-equipment/conference2001/conferencedocuments/ip-2-e.pdf>. Access on March 09, 2020.

2.- Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol – Explanatory Report and Commentary – UNIDROIT – DCME-IP/2 – (page 2) available at <https://www.unidroit.org/english/conventions/mobile-equipment/conference2001/conferencedocuments/ip-2-e.pdf>. Access on March 09, 2020.

3.- <https://ctc-compliance-index.awg.aero/about/faq#ctc>. Access on March 09, 2020, 12:11 p.m

4.- Diplomatic Conference to Adopt a Mobile Equipment Convention and an Aircraft Protocol – Explanatory Report and Commentary – UNIDROIT – DCME-IP/2 – (page 3) available at <https://www.unidroit.org/english/conventions/mobile-equipment/conference2001/conferencedocuments/ip-2-e.pdf>. Access on March 09, 2020.

5.- <https://ctc-compliance-index.awg.aero/about/methodology>. Access on March 09, 2020, 12:28 pm.

6.- According to the methodology available at : <https://ctc-compliance-index.awg.aero/about/methodology>. Access on March 09, 2020, 12:31 p.m

the OECD (Organization for Economic Cooperation and Development) Aircraft Sector Understanding, an agreement with respect to export credits relating to civil aircraft⁷; (ii) be removed from the list of countries eligible to the discount due to non-compliance with the provisions of the Convention;

Variable D: analysis on whether the contracting state has or not a “communication channel” with AWG to provide information with respect to the compliance matters and if such channel is effective; **Variable E:** a jurisdictional analysis of legislation and practices in order to verify if the existing rules comply with Convention requirements;

Variable F: analysis of political risks indexes and the rule of law with respect to the enforceability of the existing law and protection of property rights.

By creating the CTC Index, AWG intends to (i) map the level of commitment of each contracting state regarding the enforceability of the Convention; (ii) provide an analysis on whether such contracting state tends to comply or not with the provisions of the Convention in the future; (iii) stimulate compliance with the provisions of the Convention; and (iv) provide a legal risk assessment⁸.

According to AWG, the CTC Index was prepared based on a rigorous and complete methodological process and on legal inputs provided by experts in the aviation legal market and more than 200 law firms over the world with⁹. In addition to the information provided by the legal experts, when creating the CTC Index formula AWG also counted on the significant experience of its members, the opinions of the Executive Committee of AWG Legal Advisory Panel and in the analysis of existing literatures and technical material¹⁰. The inaugural version of the CTC Index is already available in the

AWG official website (www.awg.aero). 53 countries were analyzed, being 43 in the list of countries that made qualifying declarations, i.e. expressly declared the applicability of specific rules and remedies of the Convention and 10 countries in the list of the ones that did not make the qualifying declarations, which may limit the applicability of the Convention provisions. Among the countries with qualifying declarations, the higher scores were attributed to Canada, Australia and New Zealand, while Mozambique, Tajikistan and Nigeria have the worst scores in the ranking. In the list of countries that did not make the qualifying declarations, United States, Spain and Mexico are the ones in the first positions¹¹.

The Convention can be considered as one of the most successful treaties related to private international law and has certainly provoked significant changes in the aviation sector over the last years. After almost 20 years of the signing of the Convention, the CTC Index is now created and has a significant potential to serve as a resourceful toll that will give to the parties involved in cross border transactions more technical information to negotiate the economic and legal conditions of the aircraft finance and lease agreements.

In a globalized market such as the one that involves the aviation sector, the compliance by the countries with the provisions of the international treaties will have a direct influence in the financing conditions of the transactions and in a long run can be a key factor to determine whether such countries will have a developed aviation market with modern equipment or an underdeveloped one caused by the increase of creditors risks, which will automatically create higher costs to the debtors.

7.- <https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/aircraft-specific-rules/> Access on March 09, 2020, 12:39 p.m.

8.- <https://ctc-compliance-index.awg.aero/index> Access on March 09, 2020, 04:48 p.m.

9.- <https://ctc-compliance-index.awg.aero/about> Access on March 09, 2020, 04:54 p.m.

10.- <https://ctc-compliance-index.awg.aero/about/methodology> Access on March 09, 2020, 05:08 p.m.

11.- <https://ctc-compliance-index.awg.aero/index> Access on March 10, 2020, 09h39 a.m.

US \$ 8 billion impact, initial calculation by Covid-19 in LA aviation.

Global aviation is facing turbulence in the face of the coronavirus pandemic (Covid-19). The President of the United States, Donald Trump, announced the cancellation for 30 days of flights to and from Europe, except for the United Kingdom, as a preventive measure. Despite the fact that the World Health Organization (WHO) has not recommended restrictions on international travel (in its last update it stated that restricting the movement of people and goods in public health emergencies has been shown to be ineffective in most of the Situations because it may consume necessary resources for other interventions and interrupt the arrival of technical support and necessary aid), various countries have implemented measures in this regard. Based on the estimates of the International Air Transport Association (IATA), the director said that the economic effects in the area (which last year mobilized 300 million passengers, 3.9% more than in 2018) could reach 8,000 million dollars. After a positive first two months for the industry, it is expected that from this month there will be less passenger traffic. www.eleconomista.com.mx/empresas/Impacto-de-US8000-millones-calculo-inicial-por-Covid-19-en-aviacion-de-AL-20200312-0028.html March 12, 2020.

COVID- 19: Issue mandatory circular for national aviation.

The Federal Civil Aviation Agency (AFAC), together with the General Directorate of Protection and Preventive Medicine in Transport (DGPMP), issued Circular CO SA 09.1 / 13R1 that establishes a mandatory contingency plan, which aims to establish actions to deal with the outbreak of a communicable disease that represents a risk or emergency for public health of international importance, as well as maintaining operational security conditions at air terminals and contributing to the process of continuity and sustainability of air transport operations, among others. <https://a21.com.mx/aeropuertos/2020/03/17/covid-19-emiten-circular-obligatoria-para-aviacion-nacional> March 17, 2020.

How airlines are being grounded by COVID-19.

It's no surprise that the COVID-19 pandemic has thrown the world into a chaos. As the number of new cases continues to surge in all parts of the world, the aviation sector has been affected enormously. Since, the combination of trip cancellations and country-specific restrictions on international flights has had a great impact on the \$880 billion global airline industry. For instance, the earliest impacts were felt in February, as flight capacity in and out of China dropped with a 71% drop in flights compared to the same date in 2019. Meanwhile in Europe, Italy saw a 22% drop in flights due to the announcement of a national lockdown on March 9. And now that the situation has intensified, flights to and from Italy have dropped 74% from their normal rates. www.weforum.org/agenda/2020/03/this-chart-shows-how-airlines-are-being-grounded-by-covid-19 March 21, 2020.

Urgent action is needed to protect aviation from COVID-19 impact, declared ICAO, IMO and UNWTO.

Following the International Civil Aviation Organization (ICAO), International Maritime Organization (IMO), the World Health Organization (WHO) joining the UN World Tourism Organization (UNWTO) for a virtual teleconference on coronavirus, the three transport organizations have called for urgent actions to be implemented in order to limit the impact of the virus on the aviation and tourism sectors. Overall, one of the main conclusions of the teleconference, was the urge for governments across the globe, to take immediate action including through financial aid packages and incentives, help the two sectors withstand current COVID-19 risks and impacts. www.internationalairportreview.com/news/114005/urgent-action-needed-protect-aviation-covid-19-impacts/ March 23, 2020.

IATA estimates global losses of 252 billion dollars.

Despite the incorporation and operation of the recently created Federal Civil Aviation Agency (AFAC, by its acronym iThe International Air Transport Association (IATA) estimated that the losses on airline profits could be around 252 billion dollars, a drop of 44% compared to what was obtained in 2019. However, this estimation is based on the possible scenario in which the severe travel restrictions last up to three months. And although, IATA's estimation of the losses was of \$113 billion, during the past month, several countries have introduced travel restrictions and closed their airspace, leaving more than 60 airlines totally grounded, therefore eliminating international air market. <http://a21.com.mx/organismos/2020/03/24/estima-iata-perdidas-globales-de-252-mil-mdd> March 24, 2020.

In this month extract was prepared by A. Fragoso,, A. De la Fuente, P. Arandia, R. Nerio, R. López, R. Mancilla, M. Castro.

International flights in Latin America has dropped in a 65%.

The Latin American and Caribbean Air Transport Association (ALTA) called on the governments of the region to implement measures that sustain the industry, after registering a significant reduction in international operations. According to ALTA, international flights outside Latin America and the Caribbean fell 65% in the last weeks of March; in some airports this number reaches 99% and in terminals such as Tocumen in Panama, Quito in Ecuador and El Dorado in Bogotá, they are completely suspended. "The recovery in passenger demand will not be quick. JP Morgan estimated that if all Latin American airlines cancel 100% of their itineraries for a long time, they will survive between 3 and 10 months maximum," said ALTA. <https://a21.com.mx/aerolineas/2020/03/24/vuelos-internacionales-en-america-latina-han-caido-65> March 24, 2020.

IATA asks for an impulse on cargo transport after crisis.

The International Air Transport Association (IATA) and its members called on governments to take urgent measures that guarantee cargo transport in an open, efficient and effective manner. Through a statement, the association pointed out that nations must take a "step forward" to keep global supply chains open, in the face of the health emergency they are experiencing. "Air cargo is a vital partner in the global fight against COVID-19. But we are still seeing examples of cargo flights filled with life-saving supplies and medical equipment, facing cumbersome and bureaucratic processes to secure their operating permits," said Alexandre de Juniac, CEO of IATA. <https://a21.com.mx/aerolineas/2020/03/25/pide-iata-impulsar-transporte-de-carga-durante-crisis> March 25, 2020.

Covid-19: IATA calls on LA governments to support aviation industry.

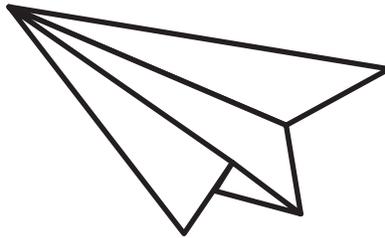
The International Air Transport Association (IATA), made an urgent call to the governments of Latin America and the Caribbean to support the aviation industry in the face of the crisis caused by the Covid-19 pandemic. He called, among other things, for financial support to passenger and cargo carriers, to compensate for the reduction in income, loans and discounts on payroll taxes paid to date and during 2020, along with a temporary exemption from taxes on plane tickets and other charges imposed by the Government. www.jornada.com.mx/ultimas/politica/2020/03/23/covid-19-iata-llama-a-gobiernos-de-al-a-apoyar-industria-de-aviacion-976.html March 25, 2020.

Prior to Covid-19, air traffic grew 10.9% in January-February.

Aviation in Mexico mobilized 17 million 385,148 passengers in the first two months of 2020, which represented an increase of 10.9% over the previous year, a behavior that will hardly be recorded again in the medium term after the "brutal blow" of the pandemic of the Covid-19, as described by the International Air Transport Association. Figures from the Ministry of Communications and Transportation report that, during February, when the health crisis had not impacted America, passenger air traffic in the country had its best performance in 34 months, growing 12.3% and reaching 8 million 319,634 people, the largest jump since April 2017, when it grew 19.2 percent. www.economista.com.mx/empresas/Previo-a-Covid-19-crecio-10.9-el-trafico-aereo-en-enero-febrero-20200325-0007.html March 25, 2020.

Coronavirus in Mexico: aviation estimates 96,000 jobs could be lost.

José Suárez Valdés, member of the Trade Union Association of Pilots (ASPA in Spanish), say that in the face of the crisis caused by the coronavirus, the air sector is experiencing the worst economic facet in its entire history. The Latin American and Caribbean Air Transport Association (ALTA in Spanish) reported that the pandemic has caused losses in the region equivalent to USD 8 billion. This pandemic could lead the country's airlines into bankruptcy. www.infobae.com/america/mexico/2020/03/26/coronavirus-en-mexico-la-aviacion-estima-en-96000-los-puestos-de-empleo-que-podrian-perdese/ March 26, 2020.



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