

August 15, 2019  
year 14 | No. 03

# coelum.

Monthly Digital Publication by Abogados Sierra

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Defense of the rule of law in  
Mexico.  
by Carlos Sierra.

JULY NEWS on  
Mexican Commercial Law

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.

sierra

## The battle for an airport. Defense of the rule of law in Mexico.

by Carlos Sierra.

It is truly impressive to witness the effort and talent that is being deployed by the group *No Mas Derroches*<sup>1</sup> in order to maintain and defend the rule of law in Mexico. By developing various arguments the group is fighting to defend the Mexico City Airport project at Texcoco (NAIM) and prevent the enormous waste of public funds resultant from its cancelation. The group, integrated by various civil organization and aided by some of the finest legal minds in the country has filed various constitutional claims (*amparos*) before various district courts to prevent the irresponsible construction of the new airport project at Santa Lucia, on the grounds of what is currently a military air force base.

*“The arbitrary and capricious decision by president Lopez Obrador to cancel this project and to construct Santa Lucia is untenable from every technical, operational, aeronautical and legal standpoint and has been challenged repeatedly by every learned member of the aviation and financial community both in Mexico and abroad.”*

The purpose of these proceedings is twofold, first it is attempting to prevent the improvised construction of the new airport without meeting the applicable regulation on environmental protection and, most importantly, in terms of safety. To this date no information has been presented by the government to demonstrate that it has procured the required studies that would certify that the new project is viable in these two among other important aspects that every infrastructure project is required to meet.

The proceedings in course are also aimed at preventing the destruction of the construction site of the NAIM which is nearly 50% completed and which the government intends to flood to create a lake that has never existed before and that the government alleges to be recovering.

The mere idea of flooding tenths of millions of pesos that have been invested in such project is mind numbing. The economic damage that the cancellation of this project will represent to the country's finances has been estimated to surpass USD\$ 10 Billion including the resultant loss of development, connectivity, efficiency, trade, tourism, etc.<sup>2</sup>

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The group *No Mas Derroches* has filed 147 *amparos* that challenge the legality of the decision taken by the state. In particular in respect to safety the *amparos* demand the government to demonstrate that the Santa

1.-The collective group *No Mas Derroches* (No More Waste) is a non-partisan group of individuals and civil society organizations, independent firms working pro-bono and others that participate to defend the rule of law and to prevent the misuse and waste of public funds. <https://nomasderroches.mx/quienessomos>.

2.- See Coelum, July 15, 2019 (Mexico's City New International Airport Construction/Cancelation Saga).

Lucia project is consistent with the Standards and Accepted Practices that are contained in Annex 14 and others of the Chicago Convention among other regulations applicable in Mexico.

Likewise, the group's legal actions have demanded the government to obtain the Environmental Impact Manifest that is mandated by the applicable regulation in environmental protection and to certify that the project has contemplated the protection of various archeological vestiges that are found in the area where the project will be built.

In spite of lacking all the above the government had commenced construction of the new airport at Santa Lucia without any of these analyses in hand. It has not presented any cost analysis or any executive project of how this will be developed and built.

The result of the amparo claims filed have been mixed but so far very successful; at this time courts have ordered six definitive suspension of the works at Santa Lucia and five others have ordered as well the preservation of what has been built so far at Texcoco, not only preventing its destruction, but also ordering the necessary work to be conducted in order to preserve the site from being deteriorated by neglect and by damage caused by the elements.

If the suspensions obtained can be maintained, which is increasingly likely, the construction of the Santa Lucia airport project will be at least delayed until the substance of the amparo proceedings is resolved in full. This could take several months or even years and the project in question could be potentially impeded if the viability thereof is not demonstrated thoroughly by the government.

The president has reacted with anger and has threatened the NMD group with consequences to be faced for obstructing the government's projects. He has also attempted to discredit the group by affirming that they are representing obscure and corrupt interests that were affected by the cancellation. The truth is that the group is conformed by independent responsible citizens that are defending the right to protest against the multimillion dollar waste of public funds that this represents as well as against foolish and capricious government policy, or lack thereof.

But far more than an airport -however necessary or expensive- is at stake in this context. It is imperative that we do not permit arbitrary decisions to run over the law as if such would only apply when it favors the government's interests. The blatant disrespect for the rule of law of president Lopez Obrador must be challenged precisely by this same principle and defended by the courts imparting justice.

The result of this challenge will set precedent and will demonstrate the strength independence and viability of Mexico's institutions. It will also demonstrate whether dissent of independent citizens will be permitted and respected in the democratic context in which we are supposed to live. The judicial power will be strengthened and dignified if it pronounces its rulings independently of government pressure and authoritarianism.

This firm is proud and honored to form part of the group that has filed these amparos. We expect that our modest contribution on aspects of aviation law will be helpful and that this important venture for the future of our country will be successful.

As legal counsel we have a duty to preserve the rule of law, we shall never walk away from this, however challenging.

**Aviation in Mexico slows down 4.4%.**

Aviation in Mexico registered a passenger flux of 41 million 592 from January to May this year, an annual growth of 4.4 percent, the lowest in the last eight years. According to information from the General Directorate of Civil Aviation (DGAC), the pace with less dynamics was in 2011, when there was a 0.19 percent decrease in user traffic. From 2012 to 2018, aviation growth in terms of passengers was between 7.1 percent and 13 percent, respectively. <https://www.milenio.com/negocios/vuelos-en-mexico-con-menor-crecimiento-en-ocho-anos> July 01, 2019.

**IATA refuses the enactment of the “eco-tax” from the French Government.**

As the French transport Minister Elisabeth Borne, disclosed the plans to implement an eco-tax for airlines that carry out international operations departing from French airports; The International Air Transport Association (IATA), stated his discontent because since 1990, air companies have reduced their carbon emissions per passenger for about 50%; therefore the imposition of this tax is invalid, since it will not help the industry to invest in technology or cleaner fuels, but it will compromise the incomes of 100 billion of euros that aviation generates for the French economy. <https://a21.com.mx/index.php/aerolineas/2019/07/10/iata-se-opone-ecotasa-francesa> July 10, 2019.

**Europe And Mexico Strengthen Cooperation in Aviation Safety.**

Senior officials of the European Union Aviation Safety Agency visited Mexico on the 9th to 11th of July and signed an arrangement with the Mexican General Directorate of Civil Aeronautics to assist with the creation of the new Federal Civil Aviation Agency of Mexico. <https://www.neweurope.eu/article/europe-and-mexico-strengthen-cooperation-in-aviation-safety/> July 12, 2019.

**US, Mexico practice responses to hijacked aircraft in exercise.**

The US and Mexico practiced their response to hijacked aircraft entering the US from Mexico, the live-fly practiced radar handoffs from one jurisdiction to the other, among other tasks. <https://www.janes.com/article/89956/us-mexico-practise-responses-to-hijacked-aircraft-in-amalgam-eagle-19-exercise> July 18, 2019.

**The Challenges of Privatization in the Aviation Industry.**

Aviation has been a state-centered matter, culminating from a combination of strategic interests, national pride, and in some ways, the international aviation system itself. Today, almost anyone can buy shares in European airlines, nevertheless which are the challenges. In the political sector, airline privatization can be perceived as a withdrawal of the state from an economic sector. Therefore, issues of national pride, public service, and labor invariably rise to the table. Economically, privatization can also be tested by limited access to capital, economic cycles, and poor labor relationships. Overall, although privatization can distress some sectors, it is a successful way to ensure that a national airline benefits from private sector capital, management skills, and business insight that of course, relies on the success on negotiations, a sound transition, and a capital infrastructure favorable to a private airline. <https://mexiconewsdaily.com/news/flight-school-begins-operating-at-cuernavaca-morelos-airport/> July 20, 2019.

**Asylum Seekers Boost Air Passenger Numbers.**

The unusual discrepancy was created by a large influx of mostly Central American asylum-seekers crossing from Mexico into the United States and being flown to various cities across the US where they have family members to await an asylum hearing. <https://www.aviationpros.com/airports/news/21089808/asylum-seekers-boost-brownsville-air-passenger-numbers> July 24, 2019.

*In this month extract was prepared by J. Estrada, J. Muñoz, J. Dorantes, A. De la Fuente, P. Arandía, R. Nerio, R. López, R. Mancilla.*

**SEMARNAT authorizes Saint Lucia; “amparos” are still valid.**

The Ministry of Environment and Natural Resources (Semarnat) published today the Environmental Impact Resolution for the construction project of the mixed civil/military airport in the Military Air Base of Santa Lucia, in which it considers it to be “environmentally viable”. The authorization given by Semarnat will be valid for 50 years for the operation and maintenance of the Santa Lucía International Airport (AISL), which would operate jointly with the terminals of Mexico City (AICM) and Toluca (AIT). Likewise, they recalled that among the 147 amparos promoted by the initiative, “there are still 11 suspensions in force, so the government can NOT start St. Lucia or destroy or flood Texcoco.” <https://a21.com.mx/aeropuertos/2019/07/25/semarnat-autoriza-santa-lucia-amparos-siguen-vigentes> July 25, 2019.

**EU expects greater aeronautical investments in Mexico.**

The European air safety agency signed a work agreement with the General Directorate of Civil Aviation, its Mexican counterpart, which will make Mexico attractive by allowing regulatory harmonization and industrial cooperation. The Work Agreement between the Agency of the European Air Safety Union (EASA) and the General Directorate of Civil Aviation (DGAC) of Mexico will boost investments in this sector in Mexico, said Patrick Ky, executive director of that agency. The objective of the agreement is to strengthen the levels of aeronautical safety in Mexico, which is key to sustaining the growth of the aerospace industry in the country. By transferring the culture of quality production from the automotive industry to the aviation industry, Mexico has managed to attract significant investments from the aerospace industries. <https://www.eleconomista.com.mx/empresas/UE-preve-mayores-inversiones-aeronauticas-en-Mexico-20190725-0001.html> July 25, 2019.

**Airlines beat the world record of flights twice in a week.**

Last year the world was surprised when more than 200,000 flights were recorded in a single day. This figure was surpassed on past July 24, but the record was short-lived: the next day a new peak of air operations was recorded. On that date, 225,000 flights were registered in the world, with an average of 9,375 airplanes flying at the same time on the planet. Not to mention the peak hours, when there were up to 20,000 aircraft speeding across the skies of the world. But it only took 24 hours for that record to be exceeded. The next day, July 25, a total of 230,000 flights were counted. <https://aviaciondia.com/2019/07/las-aerolineas-pulverizan-el-record-mundial-de-vuelos-dos-veces-en-una-semana.html> July 29, 2019.

**ASA Develops Mobile Control Tower.**

Airports and Auxiliary Services (ASA) announced the development of a new air traffic management technology called “Mobile Control Tower” with which they intend to transmit information from the ground to the aircraft to facilitate air traffic in a contingency situation. The “Mobile Autonomous System for Air Traffic Management” is a device capable of being transported by either land, air or sea and was designed to operate in airfields or landing sites with difficult access. The usefulness of the Mobile Control Tower is evident, since given the geographical location of our country, natural phenomena of high impact are presented and emergency care is necessary through airports, which in response to contingencies serve as bridges air between regions, “ASA said in a statement. <https://a21.com.mx/index.php/innovacion/2019/07/29/desarrollan-torre-de-control-movil> July 29, 2019.

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## CARLOS SIERRA

Attorney at law by the 'Universidad Nacional Autónoma de México' (UNAM), has coursed post-graduate studies in civil and commercial law at the 'Escuela Libre de Derecho', international law courses imparted by Duke University and the 'Universite Libre de Bruxelles', aviation contracts law at IATA and LLM studies in Air and Space Law at Leiden University in the Netherlands. Mr. Sierra has been a professor of contracts law at UNAM and after being in-house counsel for Mexicana Airlines, he has been in private practice for eighteen years advising lessors and financiers in transactional work related to the leasing and finance of aircraft and the enforcement of their rights during default, liquidation and bankruptcy proceedings. Mr. Sierra has written several articles related to aircraft finance and leasing, the Cape Town Convention and Protocol, repossession of aircraft, aviation law and Mexican commercial law. He is currently chair of the legal advisory panel of the Aviation Working Group, officer of the Aviation Committee of the International Bar Association and member of the international advisory committee of the Leiden Foundation of Air and Space Law. Mr. Sierra is also an instructor for the International Air Transport Association (IATA) on aircraft leasing and acquisitions and has been named by Chambers as the most prominent aviation attorney in Mexico for the past three years.

LANGUAGES: Spanish and English.

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