

Air carriers' civil responsibility in Mexico: a possible outdated inspiration from the Warsaw Convention.

by Vera García  
P. 01-03

OCTOBER NEWS on  
Mexican Aviation  
P. 04-05

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sierra

November 15, 2016 year 11 | No. 07

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.



# Air carriers' civil responsibility in Mexico: a possible outdated inspiration from the Warsaw Convention.

by Vera García.

According to the Mexican Aviation Law<sup>1</sup>, the concession and permission holders of air transport services (the "Mexican Air Carriers") are responsible for any damage caused to passengers from the moment that the passengers aboard the aircraft<sup>2</sup> to the moment that they descend from the aircraft. In case of damage, the passengers are entitled to receive what is established on Article 62 of the Civil Aviation Law from 1955 ("CAL") and article 1915 of the Civil Code for Mexico City of 1928, which state the following:

*"Article 62 of CAL: for damage incurred to passengers, the right to receive an indemnity will be subject to what is established in article 1915 of the Civil Code for Mexico City, except for what is referred to the amount, that will be the triplicate of what is establish in such article (...)"*

*"Article 1915 of the Civil code for Mexico City": (...) when damage is caused to people and causes death, permanently total incapacity, permanently partial, temporally total, or temporally partial, the degree of repair is determined by the provisions of the Federal Labor Law. In order to calculate the appropriate compensation, it shall be fourth times the highest minimum wage in Mexico City<sup>3</sup> and will be extend to the number of days for each of the disabilities mentioned in the Federal Labor Law (...)"*

From these articles we understand that the compensation to passengers for any damage such as injury, death, incapacity, temporal or permanent damage or any other caused by a Mexican Air Carrier is limited to three times the amount established in article 1915 of the Civil Code for Mexico City.

*"...the compensation to passengers for any damage such as injury, death, incapacity, temporal or permanent damage or any other caused by a Mexican Air Carrier is limited to three times the amount established in article 1915 of the Civil Code for Mexico City".*

However, article 64 of the CAL grants one exception to the benefit of limitation of responsibility, it states that if the passenger proves that the Mexican Air Carrier acted in bad faith or was negligent, the Mexican Air Carrier cannot benefit from the limitation of responsibility granted in article 62 of the CAL. Thus, the burden of proof is by the injured party or passenger rather than the Mexican Air Carrier.

Article 62 and 64 of the CAL seems to be very similar to that established under article 22 paragraph 1 and article 25, correspondently, of the Warsaw Convention of 1929 (the "Warsaw Convention"), which was ratified by Mexico on 1933. It is important to bear in mind that the Warsaw Convention was celebrated when the air transport industry was a new industry and that the Convention was seeking to protect carriers by limiting their possible responsibility.

1.- Published in the Federal Official Diary on May 12, 1995.

2.- Article 61 of the Civil Aviation Law.

3.- \$73.04 Mexican Pesos (approximately 3.92 dollars).

The Warsaw Convention of 1922 which regulates international air transport of passengers, baggage or cargo, was superseded by the Montreal Convention of 2006 (the "Montreal Convention") ratified by Mexico in 2001.<sup>4</sup> There are two significant differences between the Warsaw Convention and the Montreal Convention relating to injuries, death and passengers' accidents:

1. Limitation of responsibility: unlike the Warsaw Convention, the Montreal Convention establishes that for damages not exceeding 100 000 special drawing rights<sup>5</sup>, the air carriers cannot exclude or limit their responsibility<sup>6</sup>;
2. Burden of prove: In the Warsaw Convention, the injured passengers should prove that the carrier acted in bath faith or misconduct, whether in the Montreal Convention, if the damages exceed 100 000 special drawing rights, the air carrier should prove that: a) the damages were not caused by negligence, omission or wrongful action by the air carrier on any of its employees or b) the damage was only caused by negligence, action or omission of a third party<sup>7</sup>.

As the Civil Aviation Law entered into force before Mexico ratified the Montreal Convention, it may be understandable that the Civil Aviation Law incorporates the protectoral rights of the Warsaw Convention. However, is not clear that this was the reason to incorporate limitation of responsibility to the Civil Aviation Law and the duty of prove in charge to the passenger, as the explanatory statements of the draft of the Civil Aviation did not mention it.

*"...there is no reason for the Mexican legislators for not modifying and updating articles 62 and 64 of the CAL."*

Besides, article 62 and 64 are not only against the Montreal Convention, but also against fundamental rights protected by international conventions in which Mexico is party and also contrary to article 1stand 4th of the Mexican Constitution. The CAL protects in a greater extent the patrimony of the air carrier, and as consequence the patrimony of the air industry over a) the rights of passenger to receive a fair indemnification to have a worthy life and, b) fundamental rights such as health, physical and psychological integrity (article 62 of the CAL does not event mention article 1916 of the Civil Code for Mexico City, which defines moral damage and how to indemnify it) of the passengers.

Furthermore, the Supreme Court of Justice in the *Amparo Directo en Revision* No. 1068/2011 on October 19, 2011 ruled that the article 62 violates articles 1st and 4th of the Mexican Constitution, and the pro person principle which states that involving fundamental rights, if there are two laws or regulations, in this specific case de LAC and the Montreal Convention, which have contrary provisions, the person should be benefited from the most favorable law of regulation, which in this case is the Montreal Convention. Therefore, the Supreme Court already ruled against article 62, for this reason; the current situation of the air industry; conventions on fundamental rights in which Mexico is party; and the ratification of Mexico to the Montreal Convention, there is no reason for the Mexican legislators for not modifying and updating articles 62 and 64 of the CAL.

4.- Mexico withdraw the Warsaw on 2001.

5.- The special drawing rights is based on a basket of the five major currencies: the US dollar, the euro, the Chinese renminbi, the Japanese yen and the British pound. One special drawing right is equivalent to 0,72825 dollars.

6.- Article 21 of the Montreal Convention paragraph one.

7.- Article 21 paragraph 2 of the Montreal Convention.

Finally, the limitation of responsibility, is arbitrary as is not applied to the specific case, it is not the same the damage caused by a minor injury, permanent or temporal incapacity or even the death of the passenger and as consequence, the formula used to calculate the indemnity that the passenger is entitled to receive should not be the same for every scenario. Instead the judge should attend to each specific case and determine the corresponding fair indemnity and not be limited to a fix amount that does not correspond to the damage caused to the passenger nor the conduct incurred by the Mexican Air Carrier.

In conclusion, it is much needed that articles 62 and 64 of the CAL be amended in order to eliminate the limit of responsibility in benefit of the Mexican Air Carriers and the duty to prove in charge of the passenger, because if the injured passenger is not able to prove the judge that the Mexican Air Carrier incurred in negligence or bad faith, then he is not entitled to receive a fair indemnification and the Mexican Air Carrier could have acted with guilty or negligence and not receive the corresponding economical punishment. This, is against article 21 of the Montreal Convention and the Mexican Constitution, as it does not grant security to the passengers and instead encourages the irresponsible civil aviation, as the Supreme court said *"if Article 62 of the Civil Aviation Law prevails, then an unfair advantage would occur in favor of carriers and in detriment of health, well-being, physical and mental integrity and patrimony of passengers, and will be validated a system that does no encourage responsible exercise of civil aviation, since who is known as responsible for the damage caused, performs his duties more carefully."*<sup>8</sup>

8.- No binding precedent No. 2000015. 1a. I/2011 (10a.) issued by the Supreme Court on December 2011, Judicial weekly newspaper of the Federation and its Gazette, Book III.



### **Mexico-built plane shown at Design Week.**

The two-seater, first wooden, single-engine plane aircraft designed for recreational and sports use has been certified in the U.S. and will sell for \$180,000. The side-by-side two-seater belongs to the Light Sport Aircraft category, with a flight range of six hours at maximum cruising speed of 260 km/h. Designed by Giovanni Angelucci and built by the Mexican firms Horizontec and Pirwi, the planes can reach an altitude of 15,000 feet and can also be used for educational and territorial surveillance purposes. The plane was presented during the Mexico Design Week in Mexico City's Museo Tamayo. *www.mexiconewsdaily.com October 08, 2016.*

### **IATA outlines 'transformative vision' for aviation to handle next two decades of growth.**

IATA outlined (18-Oct-2016) its "transformative vision" for air travel to accommodate a projected near doubling in demand for air travel over the next two decades. According to IATA's latest passenger forecast, some 7.2 billion air trips will take place in 2035, up from 3.8 billion in 2016. Under IATA's Simplifying the Business (StB) programme, IATA intends to overhaul the passenger experience from an end-to-end perspective across all processes, from shopping for travel, to the airport experience, to arriving at the destination, with a special focus on transformation. Programmes under the StB umbrella include: Smart Security, a joint initiative with Airports Council International (ACI) to make airport security checkpoints more efficient and less intrusive; New Distribution Capability (NDC), intended to change how consumers shop for air travel by enabling travel agents to have access to products and services currently available only on airline websites owing to technology limitations. *www.centreforaviation.com October 08, 2016.*

### **'Right-wing' populism a threat to airline industry — IATA.**

Right-wing movements from Europe to the United States challenging established political systems have becoming increasingly popular, pitching tighter, protectionist trade policies. It is these policies, which also include closing borders to foreign citizens, that threaten growth of air travel demand, chief economist Brian Pearce said at an IATA conference in Dubai. "We as an industry depend on open borders," he said. IATA expects 7 billion passengers to travel by 2035, around double the 2015 number, newly appointed director general and chief executive Alexandre de Juniac said at the conference. In November, IATA estimated that 7.2 billion would travel by 2034, which was a downgrade from its previous 7.4 billion outlook. Demand for travel in 2015 grew at its fastest rate in the five years, growing 6.5 per cent compared to 2014. However, IATA has warned this year of softening demand, largely due to weak economic outlook and a number of high profile terror attacks in Europe and Turkey that have deterred travellers. *www.gulfnews.com October 08, 2016.*

### **FAA restates Samsung phone warning as concern persists.**

The US FAA had previously cautioned passengers not to operate the Galaxy Note7 phone after a series of incidents in which the device ignited. Similar advice had been issued by the European Aviation Safety Agency, which also underlined guidelines and regulations on transporting damaged or defective lithium batteries. The FAA says that, in response, it is urging passengers not to use, charge or stow in checked baggage, any Note7 on board an aircraft. Samsung says it is working with the US Consumer Product Safety Commission to investigate the matter, but it asking all retail partners worldwide to "stop sales and exchanges" of the phone. *www.flightglobal.com October 11, 2016.*

### **AOPA asks Supreme Court to hear aircraft liability case.**

The Aircraft Owners and Pilots Association (AOPA) wants the U.S. Supreme Court attend a case involving aviation products liability. They argue that the federal regulatory and certification standards established by FAA's should be used to determine the liable situation of the manufacturers. The central point is on whether juries can impose security standards on a state level, because this will cause conflict with what the FAA establish, increasing the cost of the aviation in general. One of the purposes of enforcing the complete faculties of the FAA's standards is that if the regulations that the manufacturers need to follow are contradictory in a lot of cases the owners end up paying assuming all the responsibilities. *www.generalaviationnews.com October 17, 2016.*

*In this month extract was prepared by Miguel Ruelas, Carla Espinosa, Luis Salas, Andrés Padilla, Juan R Madero, Diana Aguilera, Selma Gonzalez y Fernanda Pérez*

**Airbus offers a peek at its flying taxi; a possible Uber of the skies.**

Airbus has announced an ambitious Silicon Valley project called Vahana. This project consists in a pilotless passenger aircraft that aims to turn the Uber of the future. The French company has been investing a big amount of money into the future and has a big advantage comparing with small startups: experience. The aircraft is capable of not needing a runway to take off and has a system that can avoid obstacles and other aircraft; the CEO has announced that they know that by releasing a pilotless aircraft a lot of safety rules must be adopted, so he assured that the “sense and avoid” technology will be used to prevent midair collisions, and a ballistic parachute would be able if a malfunction of the aircraft overcomes. [www.money.cnn.com](http://www.money.cnn.com) October 21, 2016.

**Air Transport National Association demands to update Civil Aviation Law to ensure passengers rights.**

Members of the Air Transport National Association (“Cámara Nacional de Aerotransportes” (Canaero) requested the actualization of the Civil Aviation Act which has not been modified regarding passengers’ rights. The proposal arises to a solution which includes the actualization of the regulatory framework into the best international practices, strengthen the regulator to control the conditions of the airlines operations and services. The axes of the proposals are the strengthening of information rights, cancelations, passengers obligations, handicapped passengers, luggage and delays. The actual problem is the time invested in the airports. To solve this, they want to implement last generation technology such as X rays, in order to make more efficient the process of security screening in Mexican International Airports. [www.enelaire.mx](http://www.enelaire.mx) October 26, 2016.

**Third runway at Heathrow cleared for takeoff by ministers.**

The government has approved a third runway at Heathrow to expand UK airport capacity following a cabinet committee meeting on Tuesday. Transport Secretary Chris Grayling said the “truly momentous” decision would support trade and create jobs. Heathrow said the expansion would allow it to offer more direct flights to UK destinations as well as up to 40 new cities abroad such as Wuhan, Osaka and Quito. [www.bbc.com](http://www.bbc.com) October 28, 2016.

**The Pentagon’s Terminator Conundrum: New era for military drones.**

United States has put artificial intelligence in weapons that can identify targets and make decisions. The Small Drone with a mosque-like structure, it’s camera scanning targets and no human were remotely piloting the drone. As well, The Defense Department is designing robot fighter jets that would fly into combat alongside manned aircraft. [www.nytimes.com](http://www.nytimes.com) October 28, 2016.

**Drone World Expo Speech To Address Realities Of Drone Delivery.**

Next month’s Drone World Expo will offer two phenomenal keynote panel discussions with leading industry experts providing the most current and forward-thinking information on this fast-paced, quickly changing and exciting industry. On Tuesday, November 15, the opening day, executives from NASA, Esri, IBM and the White House Office of Science and Technology Policy will discuss the Future of Drones: Clearing the Flight Path to a Connected World. On Wednesday, November 16th executives from Zipline International, Crisfield Clinic, X (formerly Google X), and the Virginia Tech Mid-Atlantic Aviation Partnership will focus on The Realities of Drone Delivery. Drone World Expo will be taking place at the San Jose Convention Center and both keynote presentations will be open to all attendees. [www.aero-news.net](http://www.aero-news.net) October 28, 2016.

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Monthly Digital Publication by ABOGADOS SIERRA

## CONTRIBUTORS

### VERA GARCIA

Attorney at Law: Admitted to practice law in 2012. Ms. Vera García, of Mexican nationality obtained her law degree at Tecnológico de Monterrey, México; attended post- grades studies in Corporate Law by Insituto Tecnológico Autonomo Mexicano; holds the Certificates of International Air Law; Airline Contract Law; Aircraft Acquisition and Financing; and Law of Aviation Insurance by the International Air Transport Association (IATA).

LANGUAGES: Spanish and English.

PRACTICE AREAS: Corporate and Aviation law.

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

  
sierra

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)

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