

# coelum.

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Passenger rights and  
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interest and public order.  
by Julio Vargas

## SEPTEMBER 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.



## Passenger rights and airline rights. They are considered of public interest and public order.

by Julio Vargas

This matter is not new and in the past we have expressed several observations regarding what legal provisions refer as to, in order to be considered as of public interest and public order.

*“In Mexico, airlines and basically every person or entity has the legal right to challenge such legal reform on grounds of violations to constitutional and human rights.”*

This theme is again being addressed from the beginning of the year as several legal provisions from the Mexican' Civil Aviation Law and Federal Consumer Protection Law were ammended by Congress in an attempt to allegedly protect passenger rights vs. conducts and agreements by the airlines, forgetting that such rights have been already established in prior legislation and also on international treaties which Mexico is part thereof, and which Congress seems to have avoid taking into account.

Some of the international in effect regulation in Mexico regarding the rights and provisions in comment are, i) Air transport Agreement signed by the United Mexican States and the United States of America dated December 18, 2015; ii) International Civil Aviation Convention (Chicago Convention); iii) Convention for the Unification of certain Rules on International Air Transport Convention (Montreal Convention).

In Mexico, airlines and basically every person or entity has the legal right to challenge such legal reform on grounds of violations to constitutional and human rights.

For such purposes it exists, among others, a legal procedure against any act derived from the authorities named Juicio de Amparo (Amparo lawsuit or claim).

According to the legal rules for the amparo procedure, the claimant is entitled along with its initial filing to request to the amparo judge or court to issue a stay order or suspension, of the act that is being challenged, until the amparo is finally ruled.

As expected, mostly all airlines nationals and internationals, who operate in Mexican airspace, independently filed for the amparo protection against the legal modifications and requested as well the suspension or stay order of the execution and enforcement of the new legal provisions. In this interim procedure regarding exclusively the suspension request, in several cases the courts have denied to grant the stay order on grounds that, if granted it would be against the public interest and public order.

Once again, Mexican lawyers have to discuss and dispute what it is considered of public interest and public order, in a legal system that has no valid and binding definition of such concepts, the law only refers to examples of what it is considered as, but leaves certain liberty for judges and courts to determine, according to the specifics of a particular case whether to consider if such public interest and public order is and if it is being challenged by the granting of the stay.

In fact our Supreme Court has been consistent in ruling that public or social interest or public or social order are becoming legal concepts somehow indeterminate and impossible to define and which content may only be outlined by time, form, mode and place circumstances prevailing at the moment in which the assessment is being made.

We will elaborate some reflections of what some judges are considering in regards to these legal concepts referred to

the modifications of aviation and consumer rights laws.

The courts have been ruling in this regard, that if the stay is granted:

- The collectivity will be deprived of a benefit that the law is granting or a damage would be inflicted to such collectivity that in any other way it wouldn't resent.
- The society will be affected because it will impede the exercise capacities of the authorities to regulate in aviation and consumer right matters, with the main goal to provide a qualified and efficient service to the air transport users which it translates in the loss of a benefit that the laws provide to the collectivity.
- The Civil Aviation Law and the Federal Consumer Protection Law constitute an essential legal instrument for the protection of the rights of passenger and general users of airline transport services, all of which creates certainty and security in case the authorized airline breaches the in force legal regulations.
- Legal in force provisions would not be followed in civil aviation and consumer protection matters that implies the breach of public order and general interest regulations which main object is to satisfy social needs, aspects that obviously overlap the particular or private interest.

As we can appreciate, the broadness of the courts to define these concepts is huge, but still we believe that it rests in some facts not precisely accurate or even more, misleading or even false.

It seems as if we were in a case where this legal modifications were the first regulation ever regarding civil aviation and passenger or consumer rights and that no international regulation exists or is taken into consideration as applicable to Mexico.

These modifications pretend to be an instrument to stop the erroneously conceived abusive and outlaw practices by the air industry.

Furthermore, they tend to use the term "general" when, like in the case, they are referring not to the general population, rather than, only those who happen to buy an airplane ticket.

The judges, are forgetting that the legal modifications subject to judicial scrutiny are exactly that, modifications as opposed to a brand new legislation in aviation or consumer laws, thus, passenger and aviation service providers are binded and protected under such laws and furthermore, by international treaties which Mexico has subscribed and are in full force and effect in Mexican airspace.

The proposed legal modifications in some cases go beyond what is actually in effect and stated in those international treaties that provide reasonable protection to passengers.

We must take in to consideration the fact that international conventions related to aviation as well as the aviation local rules and consumer rights are provisions that already have been considered as of public and general interest, therefor, when a judge considers that granting a stay order to the intended legal modifications on grounds of violation of public and social interest provisions, they are in fact entering in a complicated contradiction since the current and in effect regulation is also as of social and public interest. The current regulation as is, its not in any manner against public and social interest and there is no court precedent that has declare such thing.

In these terms, if a stay order is granted to the proposed bill until the constitutional and human rights test is concluded through the amparo procedure, passenger rights are duly protected as we speak and consumers of the aviation services have immediate access to legal relief and suffice protection against airlines breach of contract.

### **US clears suspended Super Hornet export to Canada.**

The US State Department has approved a potential sale of Boeing F/A-18E/F Super Hornets to Canada, but bad blood between the Canadian government and Boeing may have already spoiled the deal. The proposed sale would include 10 single-seat F/A-18Es and eight two-seat F/A-18F Super Hornet aircraft, along with a host of equipment including 100 Raytheon AIM-9X Sidewinder Block II missiles, according to the 12 September State Department notice. The recent State Department approval does not indicate relations have patched up, but that US government continued with its process to respond with a letter of formal proposal. <https://www.flightglobal.com/news/articles/us-clears-suspended-super-hornet-export-to-canada-441067/> September 13, 2017.

### **More than 40,000 aircraft now equipped with ADS-B.**

As of September 1, 2017, rule-compliant Automatic Dependent Surveillance-Broadcast (ADS-B) equipment is now on board more than 40,000 aircraft flying in the United States. The FAA estimates that 100,000 to 160,000 general aviation aircraft will need to be equipped with ADS-B Out before the Jan. 1, 2020, mandate. Since the FAA announced the mandate, general aviation manufacturers have worked hard to design, develop, certify and make available ADS-B products that enhance safety at a reasonable cost, GAMA officials said. <https://generalaviationnews.com/2017/09/18/more-than-40000-aircraft-now-equipped-with-ads-b/> September 18, 2017.

### **Federal Judge Rules on State and Local Government Right to Regulate Drones.**

The decision is the first of its kind for unmanned aircraft in the U.S. A federal judge ruled that a Massachusetts city was wrong in establishing its own drone regulations and restrictions. The landmark decision ruled that the city of Newton, MA, did not have the authority to impose a ban on unmanned aircraft flights below 400 feet, prohibit flights over private and public property without the landowner's permission, or require local registration of drones. The regulation passed despite opposition from both of Newton's mayoral candidates, as well as citizens who argued that any restrictions would be blocked by the FAA's own regulations. <http://www.flyingmag.com/federal-judge-rules-on-state-and-local-government-right-to-regulate-drones> September 21, 2017.

### **United Nations Considering Global Drone Guidelines.**

The aviation arm of the United Nations is sponsoring a two-day event in Montreal, where participants like Amazon Inc., the National Aeronautics and Space Administration, Boeing Co., General Electric Co., two leading industry trade associations, and researchers from China and Brazil will gather to meet about the booming drone industry. The UN is also backing ICAO's proposal to create a global drone registry, which would create a "one-stop shop" for law enforcement to access all drone data and information, as opposed to multiple databases. <http://www.flyingmag.com/united-nations-considering-global-drone-guidelines> September 21, 2017.

### **House Democrats block FAA extension.**

House Democrats on Monday blocked a Republican push to fast-track an FAA extension, with just days to go until current law expires Sept. 30. "We're here today because the chairman of the committee has stubbornly persisted in trying to privatize air traffic control," DeFazio said, blasting Shuster on the House floor. "Instead of acting on these priorities, House Republicans are advancing a sprawling FAA extension package laden with completely unrelated and inadequate items," she said. House Minority Whip Steny Hoyer, top Transportation Committee Democrat Peter DeFazio of Oregon and other Democrats also signed onto a Dear Colleague letter opposing the bill. <http://www.politico.com/story/2017/09/25/house-democrats-faa-extension-243102> September 25, 2017.

### **US government recommends 220% import tariff on C Series.**

The news, though not yet confirmed by the US government, would mark a victory by Boeing, which claims Bombardier's sale of 75 CS100s to Delta Air Lines in 2016 violated trade rules. Boeing alleged that a heavily-subsidised Bombardier sold the aircraft to Bombardier at a price of about \$20 million. Those aircraft, Boeing estimated, cost more than \$33 million to produce. The US airframe also argued that Bombardier has benefited from \$2.5 billion in government equity infusions, nearly \$500 million in C Series launch aid and at least \$1.6 billion in other subsidies, according to its petition. <https://www.flightglobal.com/news/articles/us-government-recommends-220-import-tariff-on-cseri-441547/> September 27, 2017.

### **U.S., Russia Trade Charges Over Open Skies Treaty Compliance.**

The U.S. and Russia have accused each other of violating terms of a longstanding Open Skies Treaty that allows participating nations to conduct unarmed reconnaissance flights over each other's territories. The flare-up could lead to tightened restrictions on the flights, which were designed to ease tensions over military forces and activities. The U.S. signed the treaty in 1992 during the administration of President George H.W. Bush. Overseen by the Open Skies Consultative Commission in Vienna, the agreement entered into force in 2002 and now comprises 34 nations. Responding to the anticipated U.S. action, Russian Deputy Foreign Minister Sergei Ryabkov said his nation has "a number of counter-claims addressed to the United States," regarding compliance with the treaty, the Russian news agency Tass reported. Russia expects the U.S. will impose restrictions on overflights beginning in January and will respond in kind, Ryabkov said, according to the report. <http://www.ainonline.com/aviation-news/defense/2017-09-27/us-russia-trade-charges-over-open-skies-treaty-compliance> September 27, 2017.

### **New York State Department of Environmental Conservation Sends Drones to Puerto Rico.**

New York Governor Andrew Cuomo sent three of the Department of Environmental Conservation's drones and two operators to Puerto Rico to assist the New York Power Authority in restoring the island's grid and carrying out other emergency response missions. Training at the FAA's UAS test site at Griffiss International Airport in Rome, 14 DEC pilots prepared for several months under the guidance of the Northeast UAS Airspace Integration Research team. <http://www.flyingmag.com/new-york-state-department-environmental-conservation-sends-drones-to-puerto-rico> September 28, 2017.

### **Volocopter Completes Test Flight Over Dubai.**

New aircraft rebranded the Autonomous Air Taxi. Dubai officials say they want theirs to become the world's smartest city. A project certain to help reach that goal is developing a fleet of autonomous vehicles to handle a quarter of all passenger transport by 2030. The successful flight kicked off a testing regime expected to consume another five years before regular AAT service is expected to begin. The testing period in Dubai will also allow time to develop laws and policies governing certification of the aircraft and AAT operations, defining aerial routes and corridors, designing and locating take-off and landing points. Standards for official operators of AAT services in Dubai will also be created, as will identifying the roles and responsibilities of stakeholders, while specifying security and safety standards for service. <http://www.flyingmag.com/volocopter-completes-test-flight-over-dubai> September 28, 2017.

### **Carriers unhappy with changes to Canadian aviation regulations.**

Amendments to aviation regulations proposed by Transport Canada regarding pilot fatigue have met with strong criticism from various groups, despite more than three years of stakeholder consultation. While the Safer Skies coalition says that the new regulations don't go far enough, pilot groups in the country's north say that the 'one size fits all' approach will be detrimental to their operations. In an emailed statement to CBC, Transport Canada conceded it could be flexible on some of the regulations, but pointed out that smaller operations need to contribute solutions. <https://www.ch-aviation.com/portal/news/59920-carriers-unhappy-with-changes-to-canadian-aviation-regs> September 28, 2017.

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