

**Ancient practices turned into law.**

*An analysis of two of the major regulatory issues faced by the Mexican Aeronautics Registry.*

by Andrés Angulo and Jessi Saba

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## 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.



## Ancient practices turned into law.

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Within the confines of the Mexican Directorate General of Civil Aeronautics<sup>1</sup> (“DGAC” for its acronym in Spanish), lies the Mexican Aeronautics Registry<sup>2</sup> (“RAM” for its acronym in Spanish or the “Registry”); an administrative branch well known for its constant changes in management and irregular, heterogenous and, sometimes, controversial resolutions. One might think that an office of the kind, whose sole responsibility is the management of public records related to aircraft, their engines, and airports, should follow a homogenous rulebook containing exact guidelines for the performance of its duties. Unfortunately, as it will be shown in this two-part edition of Sierra’s Coelum, this is not the case for the RAM.

To help in the process of eradicating the absence of legal uniformity in the work of the RAM, and getting rid of ancient practices perpetuated by generations of its managers (to an extent that these practices are now considered as law) two mayor regulatory issues faced by the RAM will be addressed. This December Edition of *Coelum* will cover the incorrect application of the Civil Aviation Law<sup>3</sup> and the Rules of the RAM<sup>4</sup> in an aircraft’s deregistration request by a registered owner or creditor. On a second edition to be released in January, the lack of regulation in the assignment of AEP codes<sup>5</sup> will be discussed.

### A false preconception

Contrary to other aircraft registries across the world, the RAM has long been defined as registry of operators (carriers, charter companies, air-taxis, aviation schools, among others), as opposed to a registry for property, possession, and liens over aircraft’s airframes and their engines. But let us question this idea for minute.

The Registry was created under the scope of article 47 of the Civil Aviation Law, this being the only legal precept granting authority and power to the Registry. Regarding aircraft’s airframes and engines, this article clearly sets forth an obligation – upon an abstract subject that is dependent on the specific transaction- to register within the RAM, any legal act related to their property, e.g., sale and purchase agreements, possession e.g., lease agreements, and any type of liens, e.g. mortgage, affecting aircraft’s airframes and/or engines.

For the Registry to exercise its substantive authority, legislators came up with a set of rules known as the: Rules of the RAM. Their main purpose was to answer the question: *how must the RAM exercise its authority under article 47 of the Civil Aviation Law?* These also contain: (i) an explanation of the Registry’s structure, obligations, and authorities; and (ii) all the requirements, and internal procedures, that the RAM’s manager and the rest of its members must follow, for the recordation and deregistration of all the legal acts referred to in article 47 of the Civil Aviation Law.

By introducing the above referenced Rules: (i) legal certainty is granted to aircraft’s owners and creditors that their property, and possessory rights as well as guarantees over an aircraft are recorded in compliance with requirements set forth by the laws governing legal rights over objects, and (ii) that, in an event of default,

1.-Dirección General de Aeronáutica Civil.

2.- Registro Aeronáutico Mexicano.

3.- Ley de Aviación Civil.

4.- Reglamento del Registro Aeronáutico Mexicano.

5.- An AEP code is a code provided by an Authorising Entry Point and must be entered at time of registration where the registration is to be made on an airframe or helicopter for which the state is the state of registry or has taken regulatory steps to so become. Currently, Mexico, has elected to implement AEP codes. Which means that if your airframe or helicopter is registered in one of these states, you must get a code from their designated AEP before making a registration with the International Registry.

remedies<sup>6</sup> can be requested from a competent court of law. Yet, in 42 articles contained in the RAM rules, there is not a single reference of a right to an operator above an owner or creditor, or that the Registry should be considered as a Registry of operators.

Back when the RAM was created it was decided that all its files were going to be organized by Registration Marks; assigned in accordance the Mexican Civil Aviation Law. So, all the Registry's archives contain thousands of files organized by registration marks XA (commercial aircraft), XB (private aircraft) and XC (government official aircraft, excluding military aircraft). But that was not it, given that registration marks are only assigned to aircraft for operation, it was decided (and never questioned) that the only one entitled to carry out the registration obligation contained in article 47 of the Mexican Civil Aviation Law was the operator.

This decision was clearly for the sake of the Registry's organization but it was never questioned whether it had a legal basis or not. Eventually this caused, registered owners and creditors to be dependent from the aircraft's operator to carry out any registration or deregistration of records before the Registry.

Despite repeated efforts from different aviation lawyers, the Registry, to this day, has refused to grant registration or cancellation of records without the operators "consent" to do so, defending a long existent preconception that the only one entitled to do so is the operator, and contrary to what article 47 of the Civil Aviation law and the Rules of the RAM establish. So, the RAM, to this day, is an operators Registry solely because the right to obtain registration marks for an aircraft is subject to evidence of an operating permit. However, this is a result of a practice passed from generations to generations of managers that, for the sake of organization and uniformity, have not dared to change it, not something that derives from the law.

If the RAM was to act in accordance to article 47 of the Civil Aviation Law and the Rules of the RAM, it should: (i) on the short term, allow the aircraft's owners and creditors to register and deregister any legal acts that fall within the scope of article 47, once the aircraft's file has been created per request by the operator; and (ii) in the long term, let go of the false idea that it is and operator's Registry and come up with a new system to organize aircraft's files, where the owner and creditor should not be dependent on the operator to be able to register and deregister all legal acts defined in article 47. Perhaps the best way to do so is creating a separate registry mechanism that is not organized by registration marks, but that at the same time is linked to it by means to identifying the aircraft. Under this new system, the Registration Marks Certificate<sup>7</sup> issued in accordance to article 100 of the Rules of the Civil Aviation Law, would not be needed for the purposes of recording and/or cancelling aircraft's records, and would serve its original purpose which is aircraft's identification, and would remove the dependency from owners and creditors to the operator who is obligated to place the registration marks certificate<sup>8</sup> on board the aircraft always.

### **Reclaiming a forgotten right.**

The bankruptcy of the commercial airline: *Mexicana de Aviacion*, brought perhaps some of the most controversial cases to the RAM. For the first time the RAM faced major proceedings to repossess aircraft by owners and creditors. But more than that, some of the Registry's resolutions proved that, although it has a clear legal basis to sustain its decisions, outdated practices, and fear to lose uniformity can sometimes define its final words.

Any repossession proceeding at some point must be in touch with the Registry. This is because the RAM is the one responsible for the cancellation of registration marks, once the aircraft's files are free from any records

6.- The aircraft's deregistration being the customary remedy to reclaim possession over a leased aircraft.

7.- Certificado de Matrícula

8.- Or a certified copy of it.

(property or possession) or encumbrances. But the question is, in accordance to the Civil Aviation Law and the Rules of the RAM, who can request the cancellation of the Registration Marks.

Article 46, subsection I., of the Civil Aviation Law, among other things clearly provides that the aircraft’s lawful owner can cancel registration marks, through a written request, and when subject to any encumbrances, evidence of an express consent by the creditor must be provided. Despite the clarity of this article the RAM has, to this date, not authorized one sole deregistration request filed by a registered owner.

The rationale behind the Registry’s determinations is outlined in the table below. On the first column, we provide the incorrect approach by the registry to deny the cancellation of registration marks, and on the second column we show how and why the RAM should authorize cancellation of registration marks when this is requested by a lawful owner.

<b>Today’s RAM rationale to deny cancellation of registration marks.</b>	<b>The rationale the RAM should follow.</b>
<p>Section 46, subsection I., <b>does not</b> suffice to cancel registration marks when requested by a lawful owner.</p> <p>Article 15 of the Rules of the RAM provide that, any request filed before the Registry should be accompanied by a Registration Marks Certificate when applicable. Therefore, if the registered owner does not have this in its possession, which will always be the case since the operator must place this on board of the aircraft, then the RAM cannot authorize the deregistration of the aircraft.</p> <p>Registration Marks cannot be cancelled if there are pending records and/or encumbrances in the aircraft’s files. Article 32 of the Rules of the RAM provides that records may only be cancelled by the interested party. For the Registry, the interested party is only the operator and not the owner or the creditor.</p>	<p>Article 46, subsection I., does suffice to cancel registration marks when requested by a lawful owner, it clearly provides so and the Registry should not request any additional requirements than the ones provided by this law.</p> <p>Articles 15 and 42 from the Rules of the RAM do not relate to a request to cancel registration marks. These Rules are only applicable for registration and deregistration of those legal acts described in Article 47 of the Civil Aviation Law.</p> <p>A lawful owner’s right to cancel registration marks that derives from a Federal Law should not be superseded by a hierarchically inferior set of Rules that govern administrative acts by the RAM.</p> <p>Although these should not relate to cancellation or Registration Marks, the RAM should consider the lawful owner as an interested party for the purposes of cancelling records in terms of the Rules of the RAM.</p> <p>Finally, the RAM should not request the Registration Marks Certificate is filed along with the request to cancel registration marks. Since this document should only be filed when a request for the registration of a legal act is filed, or in any case the operator should be notified that, per request by the registered owner, the registration marks certificate have been cancelled.</p>

As it has been shown above, owners and creditors have indeed been deprived from a right that is granted by a Federal Law through the reiterated application of a practice. To reclaim these rights, the aviation industry must invite and make use of the available legal recourses to force the Registry to reconsider its current approach to the above referenced issues. In the end, Mexico has placed itself as one of the leading countries in aviation in whole Latin America, and for that and many other reasons it should have a Registry worthy of the hard work that has been done to reach that point.

### **On Trump and Aviation.**

Following a lengthy softening-up process by the US over the past year, seemingly against any foreign airline that might threaten the status quo, a Trump administration may well revive that populist course. The publicity that the Big Three airlines' 'White Paper' attracted globally has created a belief outside the US that open skies is a thing of the past; that liberal attitudes to air access have passed their zenith. Mr Trump's ascension may be seen by many as a signal to revive that movement and a confirmation that these attitudes are mainstream. Aviation policy typically does not feature high in the priorities of prospective Presidential candidates. Yet, for US airlines and the US industry generally this is dangerous territory as it is the US airlines who have – at least in the medium term – the most to gain from liberal market access. The likely overall outcome: slower growth and less foreign airline competition. [www.centreforaviation.com](http://www.centreforaviation.com) November 09, 2016

### **Mexico in the aerospace industry.**

In Mexico, specifically, the aeronautical sector is key to economic development due to the high number of jobs it generates, as well as wage relationships that are equivalent to 1.5% more than the rest of manufacturing. The country also has significant advantages over other economies thanks to its geographic position, proximity to two major aerospace technology development centers (Quebec and Seattle), opens up the opportunity for industrial and technological integration. [www.enelaire.mx](http://www.enelaire.mx) November 16, 2016.

### **Airports and Auxiliary Services (ASA) develops airport fire extinguishing vehicle .**

Airports and Auxiliary Services (ASA), in collaboration with the National Council of Science and Technology (CONACYT), have designed the Fire Rescue and Extinguishment Vehicle (VREI) with the latest technology and 100% Mexican manufacture. This technology is used to deal with the aim of ensuring timely assistance during the landing and take-off of aircraft in emergency situations. [www.enelaire.mx](http://www.enelaire.mx) November 16, 2016.

### **Tender to build the new terminal for the New Airport of Mexico City has been delayed.**

The Airports Group of Mexico City (GACM for its name in Spanish) announced that the presentation act and opening of the tender to build the terminal for the new airport, scheduled for November 22, 2016 was rearranged to be celebrated on Wednesday December 7, 2016. The reason the reschedule was to attend the interests of the companies who applied to win the bidding for the construction of the terminal building of the New Airport of Mexico City (NACM). [www.economiahoy.mx](http://www.economiahoy.mx) November 17, 2016.

### **Chris Grayling says the world of aviation will be prioritized in Brexit negotiations.**

Airlines were among the first to battle Brexit turbulence and secretary Chris Grayling, Secretary of State for Transport, has now pledged the aviation industry will be prioritized in Brexit negotiations. He also said Britain held a strong hand in the matter. "Other countries want to do business with us; they want to do business with British airlines and airports too," he said. "That's not going to change when leave the European Union." Where he did note a concern was for carriers like low-cost airline easyJet. It holds an operating licence in the UK, but relies on intra-European flights for 40 per cent of its revenues. On the other hand, Olivier Jankovec, the director general of Airports Council International (ACI) Europe, said he'd heard a different tune coming from Brussels. He sees a weaker UK position in Brussels that could also undermine the EU's liberal aviation strategy. Also, Olivier Jankovec said that Grayling's hopes up about Open Skies policies are unfounded, because after Brexit it is "very doubtful" that UK airlines will be able to fly freely across Europe and the exposure for low cost airlines to go down will be present. November 21, 2016.

### **The Airbus A350-1000 takes off for the first time.**

The first A350-1000 took off this morning from Blagnac, Toulouse, France, on its maiden flight. The A350-1000 is the largest and most powerful twin-engine aircraft Airbus has ever built, and the world's largest, most efficient, wide-cabin aircraft. Equipped with specially developed Rolls-Royce Trent XWB-97 turbofan engines. The A350-1000 is, along with the A330neo, the youngest member of the cabin family of aircraft and offers unprecedented levels of operational efficiency, noise emission and true long-range capability. [www.enelaire.mx](http://www.enelaire.mx) November 24, 2016.

*In this month extract was prepared by Miguel Ruelas, Carla Espinosa, Luis Salas, Juan R Madero, Diana Aguilera, Selma Gonzalez.*

### **FAI takes important steps for global drone sports.**

Airbus has announced an ambitious Silicon Valley project called Vahana. This project consists in a pilotless passenger. The FAI (Fédération Aéronautique Internationale) is responsible for world drone sports. As part of its work in this area, this organization has established a Working Group on matters related to drones. This Working Group will treat all kind of sporting and regulatory aspects of drones, taking care of the developing of strict rules to apply to drone sports. The work done by these experts will include the rules for the first FAI World Championships to be held in 2017; as well as the coordination of future expos where the panel discussions will be about sports development, regulatory and safety aspects, and the practical uses of drones in different areas of daily life. [www.fai.org](http://www.fai.org) November 28, 2016.

### **SEMARNAT must inform about the environmental impact of the new airport: INAI.**

The National Institute for public Access to Information (INAI standing for its initials in Spanish) asked the Secretary of Environment and Natural Resources (SEMARNAT for its initials in Spanish) to reveal and head an environmental study on the impact the construction of the new airport will have on the construction site. Speculation by ONG's report a possible environmental damage to approximately 130 flora and fauna species. [www.notimex.com](http://www.notimex.com) November 28, 2016.

### **Airline industry enjoys its 'best year since the Wright brothers'.**

The commercial airline industry across the world last year enjoyed its most lucrative year "since the Wright Brothers" to record revenues of \$751bn (€706bn). Experts said that the most profitable airlines were based in the US where they account for 58pc or \$19.4bn (€18.2bn) of total profits. On the other hand, according to them, European airlines generated \$6.9bn (€6.4bn) in profits followed by Asia Pacific airlines accounting for \$5.8bn (€5.4bn) of overall profits. Dr. O'Connell, an academic, said that last year North American airlines recorded profits of \$22.48 (€21.14) per passenger compared to European carriers generating profits of \$7.55 (€7.10) per passenger. Dr O'Connell said the ambitions of the Gulf carriers, Emirates, Etihad and Qatar Airways will ensure more established carriers such as Singapore Airlines and Cathay Pacific "are in the fight of their lives". [www.independent.ie](http://www.independent.ie) November 30, 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, its 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.

### **Doomed Jet Carrying Brazilian Soccer Team Reportedly Ran Out of Fuel.**

The pilot of the plane that crashed with a Brazilian soccer team requested an immediate landing because the aircraft was out of fuel. It has been acknowledged that the pilot informed of "fuel emergency" and a "total electrical failure" of the aircraft. After the pilot yelled "nine thousand feet" the plane crashed. The total range of the Avro RJ85 jet is 1,600 nautical miles, just close to the distance flight from Santa Cruz, Bolivia, to Medellín, Colombia; predicting some kind of negligence by flying without at least 30 minutes of fuel reserves. Despite this tragic and catastrophic accident six person survived, including: three players, two crewmembers and a journalist. [www.nytimes.com](http://www.nytimes.com) November 30, 2016.

### **US carriers welcome Trump's pick for transportation secretary.**

US airlines have welcomed President-elect Donald Trump's nomination of Elaine Chao as the next transportation secretary. Chao, if confirmed by the Senate, will succeed Anthony Foxx in the position. Chao was previously labour secretary under President George W Bush, and had served in that role for all eight years of Bush's term. She was deputy transportation secretary under President George H W Bush. If confirmed, Chao will take over the reins at the DOT as major US carriers continue to lobby the agency on issues involving foreign airlines. [www.flightglobal.com](http://www.flightglobal.com) November 30, 2016.

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## CONTRIBUTORS

### ANDRES ANGULO

Attorney at Law: Admitted to practice law in 2013. Mr. Andres Angulo, of Mexican nationality obtained his law degree at Tecnológico de Monterrey, México.

LANGUAGES: Spanish and English.

PRACTICE AREAS: Transactional, Regulatory and Aviation law.

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