

Age-based restriction for commercial aircraft operated in Mexico. A negative and weak proposal before the Mexican Lower House.  
by Misael Arellano and Miguel Ruelas.  
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year anniversary.

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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.

# Age-based restriction for commercial aircraft operated in Mexico. A negative and weak proposal before the Mexican Lower House.

by Misael Arellano and Miguel Ruelas.

In Coelum's past edition, reference was made to a proposed bill for the amendment to the Mexican Civil Aviation Law, on modifications to articles 6, 35 and 52, as well as the derogation of article 78 bis 6. The most relevant modifications are based on two main premises: the first one regarding the protection of passenger rights by stating overbooking as a crime committed by the carrier; and the second one, regarding aviation safety; proposing a twenty years age restriction for any aircraft operated in Mexico. The bill has two other proposals addressed to the aviation authority: i) to have a statistical database about the Mexican air fleet; and ii) the cancellation of the ruling stating that the information about operational safety is confidential.

*"The bill argues an indirect and inversely proportional relationship between the aircraft's age and its safety, by implying that aircraft with over 20 years of service are a hazard to Mexican aviation".*

Regardless that the authors consider that both of these referred modifications, described and argued "in full" in four pages of the bill proposal before the Mexican Lower House<sup>1</sup>, have not the proper analysis and study of the international aviation procedures, standards and studies formally conducted and established by the International Civil Aviation Organization (ICAO), the International Air Transport Association (IATA) and the Aviation Working Group (AWG). It is a fact that the problem and explanatory statements in this bill are very poor and are related to specific incident occurred at the Mexico City's airport.

A clear example of the poor analysis and the lack of knowledge of the aviation industry is reflected in the fact that this bill imposes a five-year term for the observance of the restriction that relates to the prohibition to operate aircraft older than 20 years, is included. This could implicate a substantial renewal of the fleet of certain carriers in Mexico.

In this edition, the analysis of the proposed bill will focus on the age-based restriction for commercial aircraft operated in Mexico. This issue will address the proposed bill and the effects of such proposal on the aviation industry in Mexico.

## The proposed bill.

On March 8, 2016 a proposed bill, which includes the age-based restriction to commercial aircraft operated in Mexico, was brought before the Lower House of the Mexican House of Representatives. The bill argues an indirect and inversely proportional relationship between the aircraft's age and its safety, by implying that aircraft with over 20 years of service are a hazard to Mexican aviation.

Fleet age is used as a parameter by air carriers to promote fair competition amongst them. They appeal to consumers and compete with other airlines based on consumer preferences. There is nothing unholly or dangerous about said fair market practices, however, the legal intervention and imposition over these commercial practices produces a substantive negative effect that transcends from a legal to an economic sphere.

1.- [http://sil.gobernacion.gob.mx/Librerias/pp\\_ContentoAsuntos.php?SID=9fe99fcf6526537bcbcb85e332d9107b&Clave=3363058](http://sil.gobernacion.gob.mx/Librerias/pp_ContentoAsuntos.php?SID=9fe99fcf6526537bcbcb85e332d9107b&Clave=3363058)

Disregarding any liberal postures on governmental intervention, one must assess if the intervention –in this case introducing age-based restrictions to commercial aircraft operated in Mexico- is empirically sustainable and if it assesses the externalities that may be produced by such implementation.

*"It seems only natural to have an inclination for the brand new. Newness and innovation is a commodity and these charming amenities blur the true legal and economic implications behind popular deceptions and misinformation".*

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### **The correlation between aircraft age and aviation safety.**

Firstly, it must be mentioned that the factual correlation between aircraft age and aviation safety is not addressed in this proposal. The proposed bill, in its explanatory memorandum, only makes reference to one case, involving a Mexican air carrier's aircraft which veered off the runway due to problems with the aircraft's landing gear. No casualties were reported other than the emotional distress of the passengers. "One swallow does not a summer make", and if a bill is going to impose age-based restrictions, it is imperative that the lawmakers prove a strict correlation between safety and aircraft age in order to justify and better asses the economic externalities and implications of their proposal. It is important to mention that in this bill there is no evidence that supports age-based restriction. On the other hand, there are sufficient studies that contravene the arguments set for in this proposal.

The AWG has substantially and profoundly addressed this issue under one of the organization's major projects: Cross-border transferability. The organization's assessment on this matter was entitled to and directed by Professor John Hansman, director of MIT's International Center for Air Transportation<sup>2</sup>

*"A historical analysis was conducted of aircraft accidents occurring between 1959 and 2012 for commercial jet transport aircraft with a MTOW greater than 60,000 lbs where aircraft age and operational histories were available..."*

*The analysis does not support age-based import restrictions as an effective measure to increase aviation safety, providing Design Approval Holders and Type Certification Authorities support National Aviation Authorities in managing older fleets under their responsibility..."*

*A detailed analysis of the accidents in which the aircraft were older than 20 years of age indicates that the percentage of aircraft related accidents is significantly lower in Africa than in North America or the worldwide average. This indicates that the observed increase in accident rate in Africa is due to other risk factors that correlate with aircraft age such as weaker crew training, regulatory oversight and procedures."<sup>3</sup>*

2.- AWG website: <http://www.awg.aero/projects/aircrafttechnicalrequirementsimpactingtransferability/>

3.- Hansman, John., Analysis of Impact of Aircraft Age on Safety for Air Transport Jet Airplanes, MIT International Center for Air Transportation (ICAT), October 2014. <http://www.awg.aero/assets/docs/analysisofimpact.pdf>

As addressed by the AWG, there is no evidence to support age-based restrictions, limiting the importation of aircraft as suggested by the proposed bill is unfounded and ineffective to increase safety standards in the industry. In fact, if safety is the predominant underpin for limiting aircraft operation based on age, antiquity is hardly a sustainable argument. Safety can be better and more effectively addressed with: i) optimal safety standards and guidelines; ii) managing structural degradation through obligatory and effective inspections and proper maintenance obligations; and most important, iii) adherence to the specifications of the manufacturers' instructions regarding limit of validity and their manuals for continued airworthiness.

### **Economic impact of the proposal.**

The proposed bill does not quote on empirical data as it would contravene its objective, but neither does it address the possible economic externalities. Limiting operations of air carriers based on aircraft age, represents a massive impact for jurisdictions that did not ratify the Cape Town Convention on Mobile Assets and the Aviation Protocol. As these jurisdictions, like Mexico, have no access to the Cape Town discount provided by the OECD, transaction costs for securing aircraft are high enough. The proposed bill would now oblige the acquisition of newer aircraft in a costly jurisdiction that already makes it difficult to access effective and affordable credit structures. Additionally to this aversive situation, the Mexican Senate has just passed the new bilateral Air Service Agreement between Mexico and the US which in addition to promoting competition and encouraging a more open route market between both countries, now allows the entrance of new carriers to new routes, that were previously prohibited. An age-based restriction policy would curtail fair game to Mexican carriers in their own market.

*"Safety can be better and more effectively addressed with: i) optimal safety standards and guidelines; ii) managing structural degradation through obligatory and effective inspections and proper maintenance obligations; and most important, iii) adherence to the specifications of the manufacturers' instructions regarding limit of validity and their manuals for continued airworthiness".*

The supported opinion of these authors is that age-based restriction is not, and is not anywhere close, the adequate way to improve the safety of aircraft operated in Mexico.

## **China to Invest \$11.9 Billion in Aviation in 2016.**

The initiative will begin with 11 key construction projects and 52 upgrades to existing aviation-related infrastructure, according to the CAAC. Late Wednesday, China's cabinet separately announced that it would support the growth of the country's aviation industry by opening up more low-altitude airspace. This move may further facilitate the growth of the country's general aviation industry.

[www.flyingmag.com](http://www.flyingmag.com) May 05, 2016.

## **Airbus & Siemens to Cooperate on Hybrid Electric Propulsion.**

Airbus Group and Siemens have agreed to collaborate on a hybrid electric propulsion project expected to employ a 200-strong development team tasked with demonstrating the technical feasibility of various systems by 2020. Both companies, together with Austria's Diamond Aircraft, first presented a hybrid aircraft in 2011. Since then, Siemens has engaged in the development of an electric aircraft engine that supplies five times as much power at the same weight. "We believe that by 2030 passenger aircraft below 100 seats could be propelled by hybrid propulsion systems and we are determined to explore this possibility together with world-class partners like Siemens."

[www.ainonline.com](http://www.ainonline.com) May 07, 2016.

## **FAA Proposes New Pilot Certification and Training Rules.**

Proposed rule changes would allow pilots to complete more of their instrument training on aviation training devices (ATDs) and reduce the number of tasks pilots must perform to meet recency requirements in an ATD. Under the proposed rules, applicants for commercial pilot certificates would be able to use a wider range of new technically advanced airplanes instead of older complex or turbine-powered airplanes for training. [www.flyingmag.com](http://www.flyingmag.com) May 17, 2016.

## **Troublesome Summer ahead for Air Traffic in Europe.**

Last year the row was over plans to raise the age of retirement from 57 to 59. The year before that their beef was budget cuts. And a year earlier, plans for a single European airspace encouraged controllers out of their towers and onto the streets.

This summer, right on schedule, SNCTA, the largest union which represents French air traffic controllers, has scheduled five strikes over pay and the retirement age. Ryanair says it has had to cancel 70 flights as a result of the action, not just to France but also to countries which have to be reached via French airspace, such as Spain and Switzerland. British Airways has also cancelled 20 flights. Meanwhile strikes by ATCs in Greece, Italy and Belgium have also disrupted air travel this year.

[www.economist.com](http://www.economist.com) May 26, 2016.

## **Mitsubishi MRJ number 2 takes flight.**

The second Mitsubishi MRJ-90 took flight for the first time Tuesday May 31st from Nagoya Airport in Japan. The flight had no problems in any sense just as the first Mitsubishi MRJ-90 flight that was effectuated in November 2015. The flight test program is going to count with 5 prototypes and is expected to cover 2500 hours of flight due to performance testing. It is planned for FTA-3 to test flight characteristics and avionics and for FTA-4 to achieve interior, noise and anti-icing trials. Mitsubishi plans to use FTA-5 for autopilot tests. [www.ainonline.com](http://www.ainonline.com) May 31, 2016.

## **An ever-profitable industry.**

The airline industry is expected to have its most lucrative year in history with global profits of almost \$40bn (£30bn), driven by a combination of cheaper oil and fuller planes. The International Air Transport Association (IATA), the trade body for airlines, said its forecast for a fifth consecutive year of improving profits meant it was now a "normal business", providing decent returns to investors after years of being propped up by wealthy backers and governments. The forecast would mean a 12% rise in profits from last year to \$39.4bn (£27.3bn), with more than half of the total (\$22.9bn) made in North America. European airlines' profits are expected to stay almost static at \$7.5bn, with demand dampened by terror attacks. [www.theguardian.com](http://www.theguardian.com) June 02, 2016.

## **IATA urges governments to release blocked airline funds.**

The International Air Transport Association (IATA) has called on governments to respect international agreements obliging them to ensure airlines are able to repatriate their revenues. IATA monitors blocked funds globally, the sum of which exceeds \$5 billion. The top two countries blocking the repatriation of airline funds are Venezuela and Nigeria. "It is not reasonable to expect airlines to invest and operate in nations where they cannot efficiently collect payment for their services," said Tony Tyler, IATA's Director General and CEO. Airline funds blocked from repatriation in Venezuela total \$3.8 billion. Currency controls implemented in 2003 necessitate government approval to repatriate funds. By 2013, approvals were not keeping pace with the amount of funds requiring repatriation and significant airline revenue accumulated in Venezuela. The situation became critical in 2015 when only one request to repatriate funds was approved. So far in 2016 only one request to repatriate funds has been granted. [www.arabianbusiness.com](http://www.arabianbusiness.com) June 06, 2016.

## **Mexico in a great position to be "the new connection center of the Americas".**

Aerial traffic of passengers in Mexico will have a 4.1 percent annual growth heading to 2020 according to the president of the International Air Transport Association (IATA) Tony Tyler. Mr Tayler said that the perspectives for Mexico in the future are very good, particularly because we are waiting for the project of Mexico City's New International Airport. Tyler also said in an interview with the Mexican media, "Mexico has a very good position to become the new Connection Center of the Americas" making Mexico look as a country full of prosperity for the years coming. [www.dineroenimagen.com](http://www.dineroenimagen.com) June 06, 2016.

# COELUM

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Mr. Ruelas from Guadalajara, Mexico has participated in the legal structuring and counseling of transactional, financing and leasing of aircraft and mobile assets in Mexico. Mr. Ruelas has actively assisted international and private entities in the understanding and application of the Cape Town Convention in Mexico, through the careful assessment of applicable law. He has participated in the development of various academic projects for the Cape Town Convention and other publications on this matter. Mr. Ruelas has been recently admitted to the internship program of the Aviation Working Group and is currently in joint secondment to the organization.

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