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Fiction in Terms of Jurisdiction.
by Gerardo Reyes

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“DILIGITE JUSTITIAM QUI JUDICATIS TERRAM.” “Ye who judge the earth, give diligent love to justice”

“Aircraft in Flight” as a Legal Fiction in Terms of Jurisdiction.

by Gerardo Reyes.

A legal fiction is a legal technique that has been studied by important figures like Hans Kelsen and Lon L. Fuller. A legal fiction is defined as *“some inventions and presumptions that are taken for granted even if the fact is not verified”*.¹ The technique is always looking for a certain legal effect. This article will review the circumstances that consider when an aircraft is considered in flight, even though the aircraft is grounded.

Internationally, the “Convention on Offences and Certain Other Acts Committed on Board Aircraft” signed in Tokyo, Japan on September 14, 1963 (hereinafter the Convention) regulates the legal fiction described. The aviation law expert Alejandro Piera have called the Convention *“one of the most successful treaties promoted by the International Civil Aviation Organization (ICAO)”*.²

Among other countries, some of the very first countries that signed the Convention were the United States of America and Italy³. In Mexico, the Convention was approved by the Senate on December 30, 1968 and entered into force on December 04, 1969,⁴ consequently all the provisions of that international treaty apply in the Mexican State, including the legal fiction previously mentioned.

“The reason why these two different scenarios exist, that consider an aircraft in flight despite having landed, are such for the objectives sought by the norm. The aim of the legal fiction relative to the State’s Jurisdiction is to avoid legal troubles like jurisdiction duplicity and the goal of the legal fiction for the purposes of the authority of the aircraft commander is to ensure the aircraft’s security...”

On one hand, the “Convention on Offences and Certain Other Acts Committed on Board Aircraft” grants jurisdiction to the State of registration of the aircraft on legal proceedings; on the other hand, empowers the aircraft commander to execute reasonable measures⁵ in order to safeguard the aircraft. Nevertheless, this provisions only applies when the aircraft is in flight, that is why it is important to define when an aircraft can be considered “in flight”.

The interpretation of articles 1.3 and 3.1 of the Convention, establishes the first scenario where an aircraft can be considered in flight, even when the aircraft is still on ground. The mentioned articles precise the time period when the State of registration of the aircraft is competent to exercise jurisdiction over offences committed on board.

1.- Riofrío Martínez-Villalba, Juan Carlos, *Derecho Posibilidad y Ficción. Posibilidades y Limites*, Revista Telemática de Filosofía del Derecho, nº 17, 2014, pp. 111-138 ISSN 1575-7382.

2.- *Una Mirada Crítica al Convenio de Tokio de 1963 Sobre las Infracciones y Ciertos Otros Actos Cometidos a Bordo de las Aeronaves ¿debería la OACI Intentar Modificarlo?*, Revista de Derecho del Transporte: Terrestre, Marítimo, Aéreo y Multimodal, ISSN 1889-1810, N°10, 2012, pags. 27-64.

3.- *USA and Italy signed the Convention on Offences and Certain Other Acts Committed on Board Aircraft on September 14, 1963.* https://www.icao.int/secretariat/legal/List%20of%20Parties/Tokyo_ES.pdf.

4.- *Ibíd.*

5.- *Article 6.1 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft.*

Pursuant to article 3.1 of the Convention, the State of registration of the aircraft is competent to exercise jurisdiction against unruly passengers, furthermore article 1.3 establishes that “...an aircraft is considered to be in flight from the moment when power is applied for the purpose of take-off until the moment when the landing run ends...”. Which means that the unruly passengers that commit any offence when the aircraft power is applied for the purpose of take-off until the moment when the landing run ends, will be subject to legal proceedings on the State of registration of the aircraft. Otherwise the applicable jurisdiction would be the State where the aircraft is landed.

Furthermore, article 5.2 defines the period of time when the aircraft commanders can use their faculties against the unruly passengers. For purposes of the authority the aircraft commander has, an aircraft is considered in flight “...at any time from the moment when all its external doors are closed following embarkation until the moment when any such door is opened for disembarkation...”⁶ For this reason, the Convention empowers the aircraft commander to use any measure, including coercive measures⁷ when all the aircrafts doors are closed.

The reason why these two different scenarios exist, that consider an aircraft in flight despite having landed, are such for the objectives sought by the norm. The aim of the legal fiction relative to the State’s Jurisdiction is to avoid legal troubles like jurisdiction duplicity and the goal of the legal fiction for the purposes of the authority of the aircraft commander is to ensure the aircraft’s security and to safeguard the passenger’s integrity.⁸

In 2007, a passenger from an airline of USA was taken off the plane at the Mexico City International Airport (AICM). Mr. X⁹ became furious with the crew of the flight #1525 because the airline refuses to give him an alcoholic beverage. After a certain point, the Commander, decided to take him off the plane registered in United States of America in order to safeguard the safety of the passengers.

In the following days, Mr. X filed an ordinary lawsuit for damages against the airline. The lawsuit number 772/2007 were handled by the 43 Civil Court of Mexico City. The Court dismissed the claim in accordance with article 3.1 of the Convention. The article grants the jurisdiction of legal disputes to the State of Registration of the aircraft. Consequently, the Civil Court of Mexico City indicated that the competent Court to solve the controversy is a Court of United States of America.

The plaintiff decided to appeal the dismiss decision of the Court, but the 8° Appeal Court of Mexico City confirmed the previous judgment. Mr. X refused to give up and filed an “Amparo Indirecto claim” against the appeal ruling. The Second Civil District Court of Mexico City revert the illegal judgement in accordance with article 1.3 of the Convention.

The decision to revert the two previous judgments is right because on the ordinary dispute the plaintiff and the defendant recognized that the American Aircraft was stop and landed in the AICM. This means that the competent jurisdiction belongs to Mexico’s Courts because the aircraft was not in flight.

The airline tried to revoke the judgment issued by the Second Civil District Court, but the Third Collegiate Tribunal of Mexico City confirmed the amparo ruling. The Third Collegiate Tribunal ordered to the Lower Courts to admit the ordinary claim of damages because the circumstances to consider the legal fiction of an aircraft in flight were not consummated. In conclusion, if the aircraft is not in flight the competent State to review the cases relative to landed aircraft is the one where is landed.

Furthermore, worth to mention that in the event of any legal dispute between two or more Contracting States a claim before the International Court of Justice (ICJ) can be filed only if the international claim has been preceded by a six-month arbitration proceeding.¹⁰ It is noted that the well-defined provisions about the moments to consider an aircraft in flight are crucial on legal controversies because the Court can avoid an extensive interpretation analysis.

6.- Article 5.2 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft.

7.- Article 6.1 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft.

8.- Third Civil Collegiate Tribunal of the First Judicial Circuit. Amparo en Revisión 300/2009.

9.- In order to protect private data, the names of the plaintiff and the defendant have been modified. The judicial proceeding can be consulted at: <http://www.dgepj.cjf.gob.mx/paginas/serviciosTramites.htm?pageName=servicios%2Fexpedientes.htm>

Third Collegiate Tribunal of Mexico City, File: 300/2009.

10.- Article 24.1 of the Convention on Offences and Certain Other Acts Committed on Board Aircraft.

Currency Exchange rate volatility in the face of NAFTA renegotiation.

Although in recent weeks the prospects of renegotiating the North American Free trade Agreement (NAFTA) have been favorable and benefited the Mexican peso, the risks of not reaching a beneficial agreement remain, which could put pressure on to the Mexican currency in the upcoming months said CI Banco. CIBanco reiterated that next August 16 initiates the formal process of renegotiation and on July 17th, the United States must publish in its Official Gazette the negotiation objectives agreed by the US Congress and President Donald Trump's administration. If the renegotiation objectives set by US are easy to reconcile, a positive environment for the financial markets would be expected. In that case, the exchange rate could maintain in MXN \$18 per dollar for the second half of the year. <http://www.eluniversal.com.mx/articulo/english/2017/07/12/exchange-rate-volatility-face-nafta-renegotiation> 12/07/2017.

US sanctions have taken a big bite out of Russia's economy.

Congress moved Tuesday to step up sanctions on a shrinking Russian economy that is already struggling under the weight of low oil prices, high inflation and a battered currency that has sent capital fleeing. In response to Moscow's interference in the 2016 U.S. presidential election, the House voted overwhelmingly to tighten existing economic sanctions imposed in 2014 following the Russian invasion of Crimea. Today, Russia's economy is still feeling the harsh impact of those measures, which coincided with a crash in global oil prices that cut deeply into revenues from the country's main export. <https://www.cnn.com/2017/07/25/us-sanctions-have-taken-a-big-bite-out-of-russias-economy.html> 25/07/2017.

Pemex will reduce crude production by 90,000 barrels.

Pemex Exploration and Production reported that in a maintenance program for crude oil production at the Ku-Maloob-Zaap complex in the Gulf of Mexico, it will be reduced by approximately 90,000 barrels and 20 million cubic feet of gas. "The temporary decrease in production that implies these works is from the beginning and without affecting the annual production target of Pemex established for the current year," it said in a statement. It was explained that "with its storage capacity, the Lord of the Sea could fill four times the Plaza Mexico and its equivalent is equivalent to almost four soccer fields." The hull of this emission is eight meters higher than the Kukulcan pyramid in Chichen Itza. It has an electrical plant that generates 48 mega watts, enough energy to meet the demand of 40,000 homes. <http://www.economiahoy.mx/empresas-eAm-mexico/noticias/8526193/07/17/Pemex-reducira-su-produccion-de-crudo-por-mantenimiento.html> 28/07/2017.

Mexico exports jump to new first half record.

Mexico's export surged during the first six months of 2017, setting a new record high of \$198bn for the first half of the year, as the start of NAFTA renegotiations looms in mid-August. Mexican exports notched a 10.4 per cent year-on-year increase, helped by strong growth in the manufacturing sector as well as a big jump in the value of oil exports, reports James Fredrick in Mexico City. Manufacturing exports grew 9.2 per cent over the year, with automotive exports – a consistent bright spot in the Mexican economy – up 10.9 per cent. Despite facing the ire of US President Donald Trump for trade imbalances, Mexico's exports to the US showed strong yearly growth in the first half of 2017. Total exports to the US were up 7.7 per cent while automotive exports grew 9.8 per cent. In the first half of 2017, exports to the US accounted for 82.2 per cent of Mexican exports. <https://www.ft.com/content/4a9c8a35-8545-3e10-9e3e-b6a49edd4899> 28/07/2017.

United Kingdom seeks to maintain preferential trade with Mexico after Brexit.

Mexico and the United Kingdom began informal talks on an agreement to maintain preferential trade between the two countries after Brexit, British trade secretary Liam Fox said on Thursday. The official said that he and Mexican Secretary of Economy, Ildefonso Guajardo, have begun a dialogue aimed at ensuring "that the preferential agreements that the UK currently enjoys with Mexico remain in force." Fox did not give details of the timeline of future talks. Mexico's economy ministry said in a statement on Thursday that the two trade ministers discussed "options to strengthen and expand" the economic ties between the two nations, without giving more details. Fox also told reporters on a visit to Mexico City that he hoped that the second largest economy in Latin America and the European Union would continue to conclude its modernized trade agreement. <http://www.economiahoy.mx/economia-eAm-mexico/noticias/8524555/07/17/Reino-Unido-busca-mantener-comercio-preferencial-con-Mexico-tras-Brexit.html> 28/07/2017.

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