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Mexican Airspace Protection Law: Will it resolve Mexico's concerns in the Air Industry?

- By Rubén Mancilla



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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 how high above them those rights would extend. They decided on, Ad coelum et ad inferos, meaning that their property rights would extend as high up as the heavens and all the way down to hell.

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Mexican Airspace Protection Law: Will it resolve Mexico's concerns in the Air Industry?

by Rubén Mancilla.

In recent years there have been several problems in the Mexican aeronautical industry. Due to the lack of safety, qualification, and insufficiency of personnel for the adequate provision of air services, amongst others, there has been a serious increase of incidents, namely during 2021, identifying at least 100 throughout the country[1]. These incidents were a consequence of traffic controllers' poor training, the quality of their work shifts, and supervision skills. Other factors in the increase of incidents are the poor infrastructure and technology due to negligent authorities and limited or non-existent control of the procedures for appointing truly qualified air traffic controllers. As a response to those incidents, President Andrés Manuel López Obrador in the first months of this year, presented an initiative for the creation of an Airspace Protection Law, which was approved and published on March 1, 2023.

This new law aims to monitor the activities of the industry to prevent any aerial incident that could arise, through supervised actions seeking to safeguard security, sovereignty, and independence. However, this causes the modification and even transfer of some of the faculties that before the creation of this law fell entirely in the jurisdiction of the Ministry of Infrastructure, Communications, and Transportation (SICT), which now correspond to the Ministry of National Defense (SEDENA). Both are now assisting and coordinating the country's aviation security, although it could be considered as an imposition of supervision and limitation to the SICT, as well as an invasion of competencies since SEDENA is a militarized agent and now has supervisory faculties in this industry. Unfortunately, the government intends to solve the incidents and aerial problems with a 10-page law transferring faculties to new agents militarizing the airspace, without necessarily addressing the root of the problem.

Therefore, this article will provide and analysis on this new law and identify the encroachment of competences between the SICT and SEDENA, and its inability to address the core problem of the incidents:

1. HOW THIS LAW EMERGES?

With the occurrence and increase of air incidents in previous years, such as the one mentioned in 2021, the intervention of authorities as well as the support of the industry with solutions and actions to help improve air safety has been strongly demanded. In response to these concerns, the Mexican government created and published the Mexican Airspace Protection Law, effectively leaving SEDENA in charge of this competency.

The objective of the law is stated as being the preservation of sovereignty of Mexican airspace, emphasizing that the Executive Branch, will guarantee the protection of Mexican airspace[2]. Therefore, to execute the actions corresponding to the protection of the airspace entrusted to the SEDENA, the law establishes that it is a regulatory to articles 27[3], 48[4], and 73, section XXIX-M[5] of the Mexican Constitution, related to national territory and security, seeking to safeguard them[6].

1.- https://expansion.mx/empresas/2022/05/09/controladores-aereos-reportan-30-incidentes-graves-mexico#:~:text=Los%20controladores%20a%C3%A9reos%20reportan%2030,no%20todos%20han%20sido%20reportados. Consulted in April 11, 2023.
2.- http://sil.gobernacion.gob.mx/Librerias/pp_ContenidoAsuntos.php?SID=&Clave=4362837 Consulted in: April 11, 2023.
3.- Article 27 of the Mexican Constitution: It regulates the property and territory of Mexico, as well as the country's airspace.
4.- Article 48 of the Mexican Constitution: It states that the space located above the national territory depends on the Federal Government.
5.- Article 73 section XXIX-M of the United Mexican States Political Constitution: It regulates the powers of the Congress to enact laws on national security, establishing the requirements and limits for the corresponding investigations.
6.- http://www.diputados.gob.mx/LeyesBiblio/pdf/LPEAM.pdf Consulted in: April 11, 2023.

2. WHAT DOES THE LAW STATE?

This law, to ensure the safety and sovereignty of Mexican airspace, creates a new authority responsible for overseeing and regulating activities in this industry. The National Council for Airspace Surveillance and Protection (CNVPEA) emerges to protect the country's airspace, committing itself to coordinate with SEDENA, the Ministry of the Navy (SEMAR), SICT, and the Mexican Civil Aviation Authority (AFAC) for the greatest possible protection against any unauthorized or prohibited activity, including the use of military forces if necessary. The CNVPEA will be responsible for developing and implementing emergency plans in response to any threat in Mexican airspace, which includes coordinating with agencies from other international governments for a prompt and effective response to these threats.

Additionally, the law establishes strict rules and regulations that must be followed for the correct and safe operation of any aircraft in Mexico, as well as the implementation of measures such as the request for documents that support airports' compliance with the safety conditions provided by the law, information on passengers, crew, and aircraft from those who provide the service in national territory, among others, in order to prevent and protect the Mexican airspace in case of unauthorized or suspicious activity. Finally, this law also promotes international cooperation regarding the protection of airspace and the provision of legal protections for individuals and organizations that report suspicious activity

3. SO, WHAT IS THE CORE PROBLEM WITH THE CREATION OF THIS NEW LAW?

After a thorough analysis to the content of this law, it can be observed that it does not only overly regulatory and quite iterative since there are already laws that regulate what is intended by this Law, such as the SEDENA Law that already provides protection of national territory, as well as the Organic Law of SEMAR[7]; but an invasion of competencies is clearly identified[8]. Not to mention that the law leaves many legal loopholes due to the lack of specificity in the provided regulations[9].

Likewise, according to Article 3 of this Law, a significant invasion of the air industry is evidenced by the fact that it is supervised by the military sector, which is not empowered to exercise functions related to military discipline in times of peace, so the creation of this law is a serious contravention of the Political Constitution of the United Mexican States, which in its article 129, states the following:

"*Article 129.* **In times of peace, no military authority may exercise more functions than those that have an exact connection with military discipline.** *There will only be fixed and permanent military commands in the castles, fortresses, and warehouses that immediately depend on the Government of the Union; or in the camps, barracks, or depots that it establishes outside the population centers for the stationing of troops.*"

In conclusion, it is important to highlight the Constitutional contravention presented by the creation of this law, according to the aforementioned article, in times of peace the Armed Forces cannot exercise more functions than those dictated by the law, thus exceeding and surpassing the law by granting it the airspace faculties, not to mention the risks of leaving SEDENA, that is, the Army and the National Guard, in charge

7.- https://a21.com.mx/index.php/organismos/2023/03/06/la-nueva-ley-de-espacio-aereo-es-redundante#:~:text=La%20Ley%20de%20Protecci%C3%B3n%20del,los%20controladores%20de%20tr%C3%A1nsito%20a%C3%A9reo Consulted in: April 11, 2023.
8.- https://comunicacionsocial.senado.gob.mx/informacion/comunicados/5128-aprueba-senado-ley-de-proteccion-del-espacio-aereo-mexicano Consulted in: April 11, 2023.
9.- http://comunicacionsocial.diputados.gob.mx/index.php/notilegis/inconstitucional-que-la-sedena-coordine-el-espacio-aereo-mexicano-mc Consulted in: April 11, 2023.

of airspace surveillance cooperating with the SICT, thereby will modifying the surveillance and regulation of sanctions, giving place to discretionary power.

Additionally, this law is iterative and overly regulatory, there already exists laws that regulate and contemplate infractions on the issues addressed by this new Law, such as the Civil Aviation Law or as crimes in the Federal Criminal Code. Not to mention that some questions remain up for discussion, so there are legal loopholes that must, at some point, be regulated through complementary legislation to the Law itself.

What really needs to be worked on to improve the safety of Mexico's Aviation industry is to address the needs of the sector by improving the training of personnel, such as air traffic controllers, who play a very important role, as well as improving salaries, increasing personnel, and improving technology in the industry to ensure the safety of all, to truly generate a change and improvement for the industry in the country.

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AICM within the Navy's Airport Group.

The federal government is already working on the creation of a new airport group that will be controlled by the Ministry of the Navy and will include seven terminals, among them the Mexico City International Airport (AICM), which is currently controlled by a subsidiary of the Mexico City Airport Group (GACM), and the Ministry of Infrastructure, Communications and Transportation (SICT). In this way, the State will establish direct competition with private groups such as ASUR, OMA and GAP. President Andrés Manuel López Obrador had warned that some terminals that are part of Aeropuertos y Servicios Auxiliares (ASA) would pass to the Navy, despite not having a background in airport administrative and business matters (including the promotion of tourism). *www.www.eleconomista.com.mx/opinion/El-AICM-dentro-del-grupo-aeroportuario-de-la-Marina-20230311-0024.html* 11/03/2023.

Cabotage will increase the price of airline tickets and could bankrupt companies: CANAERO.

The National Chamber of Aerotransports (Canaero) warned about the consequences that could result from the initiative that seeks to reform the Civil Aviation Law and the Airports Law, to allow airlines from other countries to perform cabotage, that is to say, flights between two destinations in the national territory. "It lacks legal support, analysis, studies, statistics, expert participation and does not contain founded elements that demonstrate public benefit for Mexicans." Mexico's airlines connect destinations with little or no economic benefit, but maintain them thanks to their profitable operations inside and outside the country. If Mexico's airlines lose high-volume routes, they will disconnect less attractive destinations, leaving multiple regions cut off. The risk is their financial weakening and subsequent bankruptcy. With cabotage, foreign companies would be taxed in their own countries, reducing tax collection and, consequently, the resources to pay for public services provided by the State. The airline industry generates 1.4 million direct and indirect jobs in Mexico. Weakening it implies the disappearance of sources of employment, decreasing tax collection, disconnecting destinations, scaring off local and foreign investment. It would provoke a new crisis in the airline industry. *www.forbes.com.mx/cabotaje-incrementara-precio-de-boletos-de-avion-y-podria-quebrar-empresas-canaero/* 13/03/2023.

AIFA Year 1: AMLO's airport fails in what it was built for.

The Felipe Angeles International Airport (AIFA), which reaches its first anniversary with just over 1.3 million passengers out of an expected 10 million, has failed to generate an air market that can be attractive to domestic and foreign airlines, and has failed to reduce the saturation of Mexico City's International Airport (AICM). AICM statistics do indicate a decrease in operations and passengers, but this is due to the impact of the pandemic and the bankruptcy of two Mexican airlines. Rogelio Rodriguez, doctor in aeronautical law, remarks that "AIFA still lacks infrastructure works that are not finished; that has not allowed it to be an attraction." Fernando Gómez, an independent air sector analyst, admits that it is a failure to have given the airport in property and administration to the Secretariat of National Defense (Sedena), in order to "generate budget to be able to grant sufficient resources for military pensions and if profitability is not achieved, there is not going to be that income either." *www.elfinanciero.com.mx/empresas/2023/03/20/aifa-primer-ano-fracasa-en-objetivo-para-el-que-fue-construido/* 20/03/2023.

Recovery of aviation category 1: Mexico still has no audit date.

Mexico is approaching the second anniversary of the downgrading of air safety, affecting the national industry, particularly airlines in the Mexico-US market, which represents a billion dollar blow to the finances of Mexican companies. The Secretary of Infrastructure, Communications and Transportation (SICT) assured that the audit to recover the category 1 status was scheduled for March; however, the Federal Aviation Administration (FAA) has not set a date to carry out an audit to recover the category 1 air safety status. A government source stated that "in order to agree on a date for the audit, modifications to the airport and civil aviation laws that have not made it through Congress must be approved." Reforms that are not related to the recovery of the category: cabotage and the authorization for parastatals to manage airlines and air ports at the same time. *www.elfinanciero.com.mx/empresas/2023/03/21/recuperacion-de-categoria-1-de-aviacion-mexico-aun-no-tiene-fecha-de-auditoria/* 21/03/2023.

Mexico could regain category 1 in aviation safety in the first half of 2023: CANAERO.

CANAERO (National Chamber of Air Transport) adverts that Mexico could recover the category 1 in air safety in the first half of the year, so it requests the legislature, in view of the reform proposed by AMLO, to speed up the initiative and amend the law, so that it can be recovered, since certain aspects of these were considered in the recovery of that category. *https://www.elfinanciero.com.mx/empresas/2023/03/27/mexico-podria-recuperar-categoria-1-en-seguridad-aerea-en-el-primer-semestre-2023-canaero/* 28/03/2023.

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