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## Presidential Attempt to Authorize Air Cabotage.

**- By Edgar Bezares**




**JANUARY NEWS ON MEXICAN AVIATION**

**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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# Presidential Attempt to Authorize Air Cabotage.

*by Edgar Bezares.*

Mexican President Andrés Manuel López Obrador (AMLO) has not ceased to surprise us with his repeated interventions in the aeronautical field and the arbitrary and negligent decisions he has made in this regard, further affecting this sector, as expressed in previous COELUM publications.

Another one of these attacks was carried out by President AMLO on December 15, 2022, through a bill to reform the Civil Aviation Law (and other laws) that he submitted to the House of Representatives, in which he intends to "... allow the cabotage of foreign permit holders in national airports and aerodromes..."[1], among other related aspects.

At present, Article 17 Bis of the Civil Aviation Law expressly prohibits cabotage by foreign permit holders:

> "Article 17 Bis. Cabotage practices by foreign permit holders in Mexican territory are prohibited.
>
> Foreign owners of non-Mexican aircraft intended for private use are prohibited from engaging in cabotage practices.
>
> Only the Mexican permit holder that provides international air transportation service under the air taxi or charter modality may transport passengers, cargo, mail or a combination of these that have embarked at a point abroad between two or more points in Mexican territory".

This provision is in accordance with the obligations assumed by Mexico in several bilateral international treaties with Brazil, Kuwait, the Netherlands, Finland, Saudi Arabia, Qatar, Japan, Korea, Great Britain and Ireland, Hong Kong, Turkey, Australia, the United States of America, Spain, among others, through the corresponding air transport services, in which air cabotage has been strictly prohibited, by establishing commonly that:

> "Nothing in this Article shall be deemed to confer on the airline or airlines of one Party the rights to take on board, in the territory of the other Party, passengers, their baggage, cargo, or mail carried for compensation and destined for another point in the territory of that other Party[2]"

According to Article 27, paragraph 4 and 42, section VI, of the Mexican Constitution, the airspace located over the national territory is part of the territory of our country, over which Mexico shall have total dominion with the extension and modalities established by international law, which is confirmed by the Convention on International Civil Aviation, which establishes that *"the contracting States recognize that every State has complete and exclusive sovereignty over the airspace above its territory[3]"*.

Based on the above, it is clear that our country has absolute freedom to determine how it uses and exploits its airspace and authorizes airlines to use the same and its airports, and it is precisely by virtue of such freedom and sovereignty that Mexico issued the Civil Aviation Law and has signed the aforementioned international treaties with several states, granting them the four basic freedoms of the air and regulating the others, but always reserving the one known as eight freedom of the air or "cabotage", with which it has sought to privilege national airlines, prohibiting foreign holders from operating routes between different points of the country in exchange for profit.

*1.- President's bill to reform the Civil Aviation Law, submitted on December 15th, 2022.*
*2.- Article 2 of the Air Transport Agreement between the Government of the United States of America and the Government of the Mexican United States.*
*3.- Article 1, of Part 1, Chapter 1, of the Convention on International Civil Aviation (Chicago, 1944).*

As mentioned at the beginning, the President sent to the House of Representatives a bill to amend, among others, the Civil Aviation Law, which, on the one hand, modifies Article 17 Bis authorizing cabotage and, on the other hand, subjects it to the requirements set forth in the proposed new Article 17 Ter that is to be added.

***"...the airspace located over the national territory is part of the territory of our country, over which Mexico shall have total dominion with the extension and modalities established by international law."***

Accordingly, the requirements established in the reform initiative for cabotage by foreign airlines to operate are: i) that it complies with causes of public interest, public utility or national security; ii) that the route is strategic for the development of the country's airport infrastructure; iii) that it has a favorable opinion from the National Security Council; iv) that the airports where the corresponding routes will be operated have technical and operational capacity; and v) that it complies with all other requirements of the law.

As has been stated, this reform initiative constitutes a violation of international treaties, and although it is not to the detriment of the other contracting nations, it is to the disadvantage of our national aeronautical industry, because if the purpose of preventing cabotage is to give priority to national airlines, with this reform proposal they would be relegated, putting at risk their already weak subsistence in the face of competition from foreign operators with greater potential and infrastructure.

The proposed amendment to the Civil Aviation Law contravenes the hierarchy of norms established by the Constitution, since federal laws cannot be contrary to the international treaties signed by our country, given that, as expressed by the Supreme Court of Justice of the Nation (SCJN) in its binding precedent interpreting Article 133 of the Constitution[4], international treaties have precedence over federal laws, which must be adjusted to them, hence the proposed amendment is unconstitutional, since it allows cabotage, which is prohibited by the binding international treaties.

***"...on the one hand, modifies Article 17 Bis authorizing cabotage and, on the other hand, subjects it to the requirements set forth in the proposed new Article 17 Ter that is to be added."***

In view of this evident unconstitutionality, if approved by the legislature, any person with a legitimate interest, such as the Mexican airlines and the unions of this industry, could fight the amendment through an amparo proceeding. Such amparo must be filed before a federal district judge and, if necessary, its resolution may be challenged through an appeal before the SCJN.

If the interested parties obtain a favorable ruling from the Federal Judiciary, its effect would be the general declaration of unconstitutionality of the aforementioned reform, leaving the text of the law as it is today.

The reform bill has not yet been approved or rejected by the legislators, as it is still under review, but a decision will be made in the coming months. However, according to what has been proposed, in my opinion, this reform is destined to fail because it is notoriously contrary to the Constitution.

*4.- "International treaties. They are an integral part of the supreme law of the nation and are hierarchically placed above general, federal and local laws. Interpretation of Article 133 of the Constitution". Registry number 172650.*

## FAA postpones last-minute visit to Mexico due to systems failure.

The Federal Aviation Administration (FAA) postponed last minute its visit to Mexico, a visit previously scheduled to continue its work to regain aviation Category 1 status for the Mexico City International Airport (AICM). AICM was downgraded to Category 2 in May of 2021 and has remained in said category for almost two years, preventing Mexican airlines from operating new routes, increasing frequencies, and incorporating new aircraft to the United States. The head of the Ministry of Infrastructure, Communications, and Transportation (SICT), Jorge Nuño Lara, assured that the work to carry out a final audit is expected for February and in March the conclusions will be ready to recover Category 1 status in April. *www.expansion.mx/empresas/2023/01/11/la-faa-pospone-visita-a-mexico-por-falla-en-sus-sistemas* 11/01/2023.

## Experts see no future for the government's airline.

The possibility of the Government being able to operate an airline is in doubt, due to the lack of market studies to support the profitability of the project, in addition to the fact that the Civil Aviation Law still limits the Ministry of National Defense (SEDENA) to operate an airline, according to specialists. Projections indicate that the airline which would be in charge of the Grupo Aeroportuario, Ferroviario y de Servicios Auxiliares "Olmeca-Maya-Mexica", managed by SEDENA, and in charge if the International Airport "Felipe Ángeles" (AIFA), will be subsidized by the Government through the public treasury. The combination of subsidy support to state-owned airline, together with the risk of the elimination of cabotage practice, which allows for reign operators to fly local routes, putting domestic airlines at risk. Specialists have agreed that these actions re only a means to boost the AIDA, which has failed to take off as the Government had planned. *www.24-horas.mx/2023/01/16/expertos-no-le-ven-futuro-a-la-firma-aerea-del-gobierno/* 16/01/2023.

## Airlines question AMLO's plan to close cargo operations at AICM.

Given the initiative of the government of Andrés Manuel López Obrador to close cargo operations at the Mexico City International Airport (AICM), the National Air Transportation Chamber (CANAERO) considered that "moving the exclusive cargo service to other terminals in a hurried manner will significantly affect the proper functioning of the supply chain, undermining the competitiveness of our industry and impacting hundreds of direct and indirect jobs that cargo operations at the AICM generate." He acknowledged that a hasty decision would generate a logistical problem for companies that share cargo aircraft along with their aircraft operations. Also, the current category 1 downgrade (of the country's air safety) does not allow for the addition of new routes and, therefore, the airport change would primarily affect domestic airlines, generating a competitive disadvantage. *www.forbes.com.mx/aerolineas-cuestionan-plan-de-amlo-de-cerrar-operaciones-de-carga-en-el-aicm/* 18/01/2023.

## COFECE proposes to improve infrastructure and cargo logistics at airports other than AICM.

The Federal Commission of Economic Competition (COFECE) proposed to the aeronautical authority to set as a goal a public policy that guarantees the ground connectivity and logistics of the airports before the decree that closes the International Airport of Mexico City (AICM) to commercial cargo operations is implemented. COFECE considered that a departure of these operations from the capital's airport would bring with it problems of competition among cargo airlines and the services they provide. "There are products whose only option to be imported, in case they require an airport, is through customs located at the AICM. Therefore, the availability of these products would be reduced, and prices would increase to the detriment of consumers, while another customs office is set up at an airport," declared. *www.forbes.com.mx/cofece-plantea-mejorar-infraestructura-y-logistica-de-carga-en-aeropuertos-alternos-al-aicm/* 27/01/2023.

## CPAM asks legislators to act against Cabotage in Mexico.

During the forum "Legislative policy in aviation matters", the College of Aviator Pilots of Mexico (CPAM) established its position against allowing cabotage in Mexico because it can cause a huge risk for the users' rights. This political move violates the sovereignty of the country and also the relationship Mexico has with the rest of the nations with which there are aviation treaties signed. *www.transponder1200.com/cpam-pide-a-legisladores-actuar-contra-el-cabotaje-en-mexico/* 27/01/2023.

*In this month extract was prepared by P. Arandia, R. Nerio, J. García, A. Pérez, P. Nava, J. Mora, E. Baltazares.*

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