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Monthly Digital Publication by  
ABOGADOS SIERRA

**Mexican Rough Skies, Turbulence in Civil Aviation.**

**- By Misael Arellano.**



  
**sierra**  
L A T A M

October 15, 2023  
Year 18 No. 5

## **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 Rough Skies, Turbulence in Civil Aviation.

by *Misael Arellano*.

As we all know, on May 25, the International Aviation Safety Assessment (IASA) Program downgraded Mexico's commercial aviation to Category 2 after considering that the Mexican state did not comply with international aviation safety standards. The reasons were clear and no one in the industry has any evidence that could refute or oppose the reported observations; the deficiencies of the Mexican Civil Aviation regulatory body were -and still are- relevant.

The insufficient number of inspectors and properly-trained technical personnel to oversee and ensure compliance with applicable regulations by the Federal Civil Aviation Agency (AFAC), the lack of training programs for inspectors, as well as the corresponding amendments to the Civil Aviation Law to establish the necessary parameters for AFAC to fully comply with its obligations to operators in Mexico in accordance with international safety standards were, among others, the main problems observed by the Federal Aviation Administration (FAA).

It is imperative to point out that, at first, the downgrade to Category 2 was not considered a relevant issue for the current administration. Even in a press conference, President Andrés Manuel López Obrador stated that the downgrade was not so serious and that Mexican airlines would not be affected because the domestic market was in high demand.

It was not until August 2021 when the first amendments to the Civil Aviation Law that specifically addressed the observations made by the FAA began to be published in the Official Gazette (DOF). One by one, the subsequent amendments to the Mexican Civil Aviation legislation, as well as to the aeronautical technical regulations, were published in order to comply with the basic principles set forth in Article 37 of the Convention on International Civil Aviation (Chicago Convention). Unfortunately, ongoing government projects diverted attention from a problem that is so relevant to Mexican aviation.

Meanwhile, on February 22, 2022, the President published in the DOF the *"AGREEMENT declaring the internationalization of the aerodrome called "Aeropuerto Internacional Felipe Ángeles", located in Santa Lucía, Municipality of Zumpango, State of Mexico"*, as an international aerodrome for the entry and exit of Mexican and foreign aircraft, both public and private, for domestic and international, scheduled, and non-scheduled air transportation. The above, stating that such airport had the infrastructure, facilities, identification signs, equipment, and services adequate to attend the aircraft, passengers, cargo, and mail of the national and international air transportation service, according to the requirements and capacities required in the applicable provisions on the matter; as well as with the operation of the services provided by the different competent authorities involved in its operation.

Without surprise to anyone, on March 3, 2022, the Ministry of Infrastructure, Communications and Transport (SICT) published in the DOF the *"RESOLUTION declaring the saturation of the terminal buildings of the Benito Juárez International Airport of Mexico City"*; instructing the Schedules Coordinator at the Mexico City International Airport (AICM) to carry out the review and, if necessary, propose the modification of the General Bases for the allocation of landing and takeoff schedules at airports under saturation conditions, published in the DOF on September 29, 2017. Clearly, a resolution that sought to pressure AICM operators to evaluate their possible transfer to the new airport.

Consequently, four days later, on March 7, 2022, the same SICT published the *"Technical-Administrative RULES for the supervision, evaluation and qualification of the occupancy of the landing and take-off schedules (SLOTS) assigned to air carriers at the airfields that are in saturation conditions in the airfield for the summer season 2022"*. Subsequently, on March 11, 2022, the Ministry of the Interior ordered the publication of the *"AGREEMENT whereby the "Felipe Angeles International Airport" is established as a place for the international transit of people"*; and on March 17, 2022, the Ministry of Finance and Public Credit published the *"AGREEMENT that modifies the other one whereby the territorial circumscription of customs and customs sections of customs is determined"*.

On March 21, 2022, the official inauguration event of the Felipe Angeles International Airport was held with barely 20 operations and endless criticism regarding the unfinished infrastructure, as well as the populist consented (or implemented) campaign acts by the current administration.

After several months without significant progress, on October 28, 2022, the SICT published the Note No. 170 called *"Binational priority to recover Category 1 to ensure safety for 30 million passengers"*; which reported the visit to Mexico of the head of the FAA and his team during the month of January 2023, in order to present the conclusions of the corrective action plan implemented by the AFAC, and to define the final audit date to recover Category 1 before the summer of the same year.

The above, paradoxically, just four days after having identified a cyber-attack to AFAC's systems which forced the SICT to order the immediate suspension of any ongoing procedures until further notice and, subsequently, to publish on November 1, 2022, the *"AGREEMENT suspending terms and deadlines in the Ministry of Infrastructure, Communications and Transportation, for the reasons specified therein"*. In such agreement, the FIRST paragraph stated the following: *"The terms and terms of the Secretariat of Infrastructure, Communications and Transportation and the Federal Civil Aviation Agency are suspended, for reasons of force majeure, from October 24, 2022 to December 31, 2022"*, which would be repealed on December 2, 2022 by another Agreement that established the resumption of the procedures related to authorizations, permits, programs and accreditations granted by the Federal Civil Aviation Agency, as of the same date. Thus, 2022 closed with a new concern, and with an uncertain future regarding the recovery of Category 1 by the Mexican authority. The year 2023 began and on January 17, the preliminary draft of the Presidential Decree was made public through the website of the National Regulatory Commission (CONAMER), which in its FIFTH article established that: *"Concessionaires and permit holders that provide public air transport service, national and international regular and non-scheduled exclusive cargo, with the exception provided for in this decree, have a maximum term of 90 days, as of the entry into force of this decree, to relocate their operations out of the Mexico City International Airport "Benito Juarez"."*

***"... "allocation", a legal figure that authorizes the administration and operation of airports / airlines through direct governmental mandate; also granting authority to the SICT to provide concessions to corporations that hold federal or municipal government participation majority without observance to the regular process."***

After a little more than two weeks and under countless discussions, and opposing positions by the exclusive cargo service operators, on February 2, 2023, the President ordered the publication of the *"DECREE that establishes the closure of the International Airport of Mexico City Benito Juarez, for the operations of the referred public air transportation service"*, such decree established a term of 108 working days for the exclusive cargo operators to relocate their operations out of the AICM. It is a fact that the decree did not establish that cargo operations must necessarily migrate to the AIFA; however, considering its location and growth capacity, it was evident that the government's intention was to position it as the best alternative to replace the AICM and to project the viability of the new airport.

Problems were obvious: how to move all the necessary infrastructure for the operation of the public air cargo service? AIFA lacked all the logistics for the cargo industry: suppliers, warehouses, customs, carriers, authorities related to cargo transportation, communication routes, comprehensive systems, and defined processes for the handling of national and international cargo.

As a parenthesis in the chronology of this article, and as a consequence of the above, on July 7, 2023, the federal government extended the deadline to relocate exclusive cargo operations outside the AICM from 108 to 148 business days from the effective date of the Decree published on February 2, 2023.

As a welcome to the month of March, the executive published in the DOF the *"DECREE by which the Mexican Airspace Protection Law is issued"*; just on March 1, 2023, the president made one more move that aligned with some appointments that left the Secretariat of the Navy or the Secretariat of National Defense, as entities in charge of customs administration and as holders of the migratory authority in various airports.

While cargo operators were analyzing viable options for the provision of their services outside the AICM, and even the tools and legal resources to challenge the order that expelled them from the Mexico City airport; on May 3, 2023, the *"DECREE by which various provisions of the Airports Law and the Civil Aviation Law are amended, added and repealed"* was published in the DOF; which, in addition to implementing the last indispensable changes to the legislation for the recovery of Category 1, establishes the concept of "allocation",

a legal figure that authorizes the administration and operation of airports / airlines through direct governmental mandate; also granting authority to the SICT to provide concessions to corporations that hold federal or municipal government participation majority without observance to the regular process.

Two weeks later, on May 18, 2023, the Ministry of Finance and Public Credit published in the DOF the "RESOLUTION authorizing the incorporation of a majority state-owned company called "Aerolínea del Estado Mexicano", S.A. de C.V., grouped to the sector coordinated by the Ministry of National Defense"; the above, for the materialization of the presidential project to create "Mexicana", a low cost airline that provides services in those routes that are not attractive for national operators, giving access to air transportation to the population of low resources and/ or established in communities or regions that are not currently connected by air.

On the last day of May, and after the last meeting with FAA representatives, the Federal Executive published in the DOF, the "DECREE by which several provisions of the Civil Aviation Law Regulations are amended, added and repealed", through which the text of the Regulations is added, homologated and unified with technical provisions developed by the International Civil Aviation Organization (ICAO) in Annexes 1 "Personnel Licensing", 17 "Security. Protection of international civil aviation against acts of unlawful interference" and 19 "Security Management", which are part of the Chicago Convention. Likewise, several provisions incorporated in the last amendment to the Civil Aviation Law are homologated and the functions and attributions necessary for the AFAC to exercise its authority in aviation matters are specified, with the purpose of establishing, administering, coordinating, supervising, operating, and controlling the provision of national and international, airport, complementary and commercial air transportation services.

Finally, together with the Decree referred to in the previous paragraph, on June 2, 2023, through the publication of the "DECREE by which several provisions of the Mexican Aviation Registry Regulations are amended, added and repealed", the Mexican government complied and closed the necessary observations for the recovery of Category 1.

It is important to mention that the control of the AICM by the Ministry of the Navy was materialized as of August 8, 2023, through the publication of the "AGREEMENT whereby the following government-own entities are grouped into the sector coordinated by the Ministry of the Navy: "Grupo Aeroportuario de la Ciudad de México", S.A. de C.V.; "Servicios Aeroportuarios de la Ciudad de México", S.A. de C.V., and "Aeropuerto Internacional de la Ciudad de México", S.A. de C.V.". The control of the AICM by the Ministry of the Navy generated a new operational conflict: the Ministry of the Navy acting as airport administrator subject to the AFAC as the governing authority of civil aviation.

To close the month, on August 31, 2023, the SICT published the "RESOLUTION declaring the saturation of the International Airport "Benito Juárez" of Mexico City", through which it determined a maximum number of 43 landing and takeoff operations that can be attended per hour at the AICM, according to the airspace limitations determined by the Navigation Services in Mexican Air Space (SENEAM). Although the resolution establishes that the measure will be temporary and will be maintained until the indicated conditions prevail, the decision seems to be biased by the will to force airlines to move their operations to the AIFA.

To conclude this list of the most recent turbulences in Mexican Civil Aviation, on September 14, 2023, the Federal Aviation Administration (FAA) informed the restitution of Category 1 in terms of air safety to Mexico. The national airlines began to request the corresponding authorizations from the authorities of both countries, for the inclusion of new routes and increase of frequencies; this, derived from the green light that the Category 1 reinstated to operate the new equipment that was incorporated to their fleets during the last two years.

While it is true that during the last few months the industry has faced unprecedented decisions and changes in the administration, operation and legislation of civil aviation, the scenario seems to become even more complicated with the direct involvement of the government in the operation of an airline and in administering airports. Based on the government's interests in the industry, it is evident that competitiveness schemes will be directly affected; in principle, by the special regime created by the public administration to benefit and promote the viability of its own projects.

With the intervention and now "legal" participation of the state in the airline industry, the most challenging issue will be legal competition: is there an efficient legal framework to ensure healthy competition in the operation of a state-owned airline and government-operated airports? We will analyze this and other relevant issues in our next publication.

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