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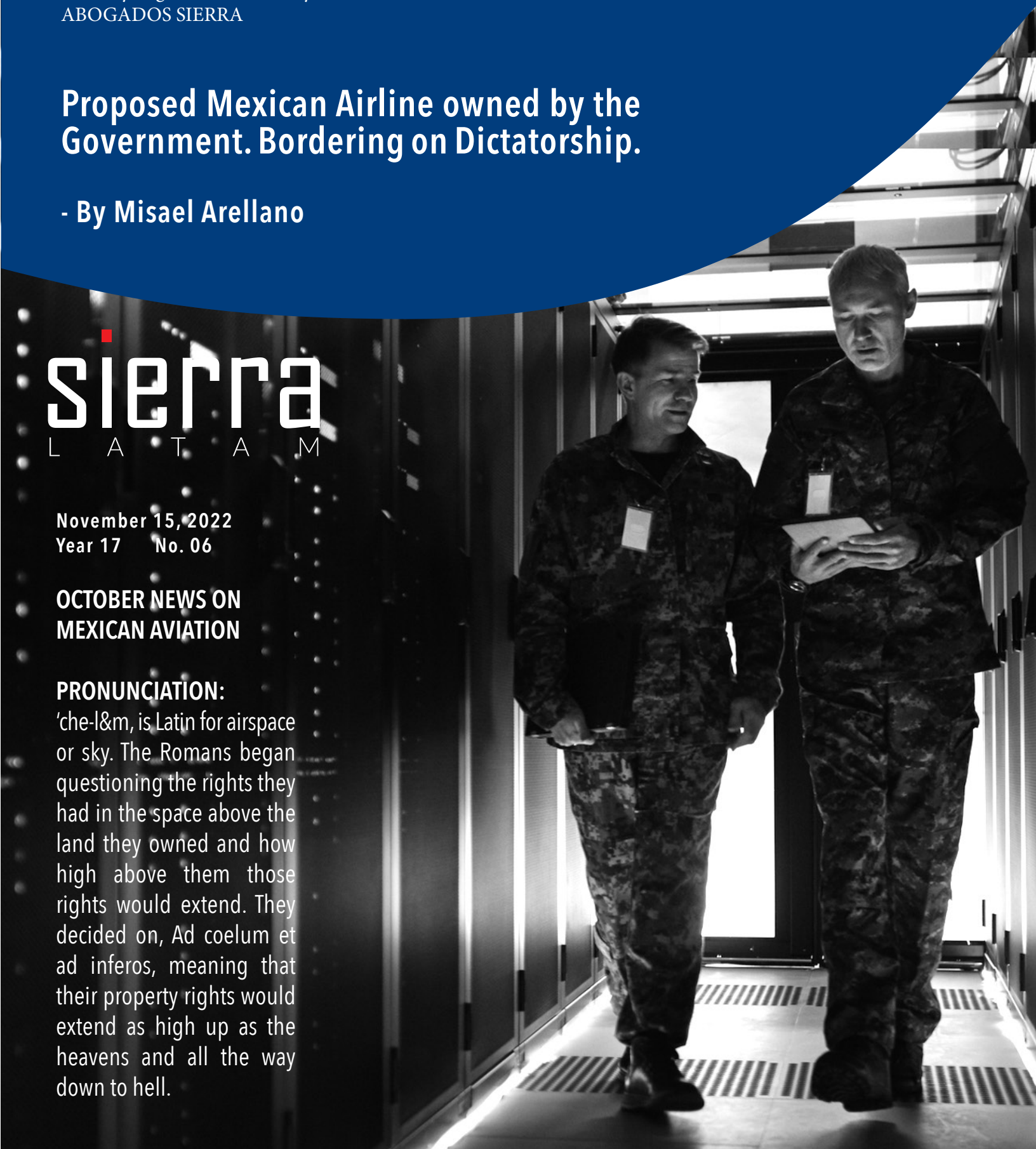
- By Misael Arellano



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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.

Proposed Mexican Airline owned by the Government. Bordering on Dictatorship.

by Misael Arellano

During the last couple of years, the control of the civil aviation authority and other entities related to the industry has been transferred to ex-military officers. In this context, it is perhaps unsurprising that the president has revealed a new project under his administration: the creation of an airline controlled by the Secretariat of National Defense (SEDENA). A move with many parallelisms such as the executive mandate that created the new Felipe Ángeles International Airport (IATA: NLU / ICAO: MMSM) serving Mexico City metropolitan area; the Mayan Train project; and the project for the construction of the new civil airport at Tulum, Quintana Roo.

> ***"It is a matter of fact that the command of the main authorities and relevant entities related to the operation of the public air transport service has been transferred to ex-military officers."***

In this edition of COELUM, we will analyze a project that encompasses several disturbing validity issues with regards to restrictions and requirements to materialize it, including operational issues, the project being that of an airline owned by the Mexican government.

As a quick introduction, it is relevant to take a look at the status of some relevant authorities / entities of the industry:

- Federal Agency of Civil Aviation (AFAC) in charge of an ex-military.
- Customs National Agency in charge of an ex-military.
- National Immigration Institute is leaded by a civilian but its local representation offices at several international airports are in charge of ex-military officers.
- MEX Airport Administration in charge of an ex-military.
- NLU Airport Administration in charge of an ex-military.

To provide elements for a better understanding of this article, it is important to mention that the Mexican military forces are composed of three permanent military bodies, commanded by two independent entities: i) SEDENA, in charge of the Army and Air Force; and ii) the Naval Secretariat (SEMAR), in charge of the Navy; with no joint command except for the President of Mexico.

It is a matter of fact that the command of the main authorities and relevant entities related to the operation of the public air transport service has been transferred to ex-military officers. In addition, we can also mention a recent dispute between SEDENA and SEMAR on which of the two entities wished to have control over Mexican air traffic control (SENEAM). The aforementioned means that all authorities controlling Mexican aviation would be under the control of ex-military personnel, and that such ex-military officers are directly appointed by the president or by an officer under the president's hierarchy.

Logical issues concerning the operation of an airport by the government are related to economic competition problems; how are other airports supposed to compete against an airport fully subsidized and supported by the government from an economic and compliance perspective. Concessionary holders deal with commercial and compliance issues and the operation of an airport is based on general rules of market. However, an airport that is ran by the government does not follow the same framework as they have: subsidies, endless financing,

special treaties for the observance of legal requirements (e.g. expedited turnaround times from the Mexican CAA and any other authority related; advantages related to the operation of the airport; incentives to carriers and vendors providing airport complementary services; advertising and promotion of destinations by the government; etc.).

Under the aforementioned scenario, there is also a pivotal legal restriction for the creation of an airline owned/controlled by the government through the same legal entity handling the Felipe Angeles International Airport (NLU): the restriction to the 5% (five percent) of the shareholder equity to airport concessionary holders in capital of air transport permit/concessionary holders.

Article 29 of the Airports Law is wide clear stating the following:

> *"Air Transport concessionaires or permit holders, their controllers or subsidiaries can subscribe, individually or jointly, directly or indirectly, just up to the five percent of the ordinary shares of the shareholders equity of a company having an airport concession or its controller entity. The same percentage restriction will be applicable when the airport concessionary holder be part of air transport concessionaries or permit holders..."*

Further to this, any company that applies for the control of an airline, must obtain a concession granted by AFAC; thus, considering that AFAC is now also controlled by SEDENA, then the military would ask itself for a concession; generating a scenario in which the military forces would be judge and jury for such effects.

On the other hand, it is also crucial to refer to the legal basis of a couple of principles applicable to military officers: a) restrictions; and b) perpetual obligations:

a) With regards to military perpetual obligations, Article 129 of Mexican Constitution states: "...In time of peace, no military authority can exercise more functions than those having an exact connection with the military discipline...". Accordingly, Article 29 of the General Regulation of Military Duties states the following: *"The military, of any level, will never intervene in matters of the responsibility of the civil authorities, whose functions they are not allowed to hinder, rather, they will respect their determinations and will provide them with the necessary assistance when required, provided that they must receive orders from the competent military authority.";* and

b) Article 324 of the General Regulation of Military Duties states: *"Retired militaries are subject to the laws governing the Army, have the right to wear the corresponding uniform, to be respected in their hierarchy, to change their residence withing the territory of the country, with the obligation to inform to the military authorities, and to travel abroad subject to obtain permit from the Secretariat of War."*

Hence, in conclusion, the current administration is using the military to shortcut processes, hide potential audits about compliance of normativity, and to freely fail to fulfill with any applicable legislation by turning civil activities into military ones changing their confidentiality to one that is "a matter of State" under which all files are classified, and nobody could request for access to the documents.

Far from improving the industry to solve the problem regarding the downgrade to Category 2 by the FAA, the president is speculating on the creation of airlines controlled by the government and suggesting to allow 8th freedom rights (cabotage rights) to foreign carriers operating to Mexico. In the midst of these issues, AFAC has turned into a monotask entity only focusing on the recovery of Category 1. The problem is that being fully focused on a single task, Mexican civil aviation authority has neglected and ignored for over a year and half, the day-to-day holistic needs of the airline industry and its necessity for improvement.

Military airline would operate with 10 aircraft next year: AMLO.

President Andrés Manuel López Obrador (AMLO) confirmed that next year a new Mexican Army airline could start operating with 10 leased airplanes, considering that the country demands more air services. Although he acknowledged that the project is still in the analysis phase. The Mexican President revealed that according to the first studies carried out, the new airline is profitable and would operate under the Olmeca Maya Mexica company, the holding company of the Armed Forces that also manages the AIFA, the Mayan Train, and the Tulum airport. The new airline could have an annual operating and administrative cost between 1 billion and 1.8 billion pesos, depending on the model of aircraft to be acquired from among the Airbus A320, Boeing 737 or ATR-72 models. *www.forbes.com.mx/aerolinea-del-ejercito-operaria-con-10-aviones-el-proximo-ano-incluido-el-presidencial-amlo/* 04/10/2022.

Carlos Rodríguez Munguía is removed from the General Directorate of AFAC; another military officer will take his place.

Carlos Rodríguez Munguía, a retired general, was removed from his position as General Director of the Federal Civil Aviation Agency (AFAC) and another military officer, Enrique Vallín, will take his place. One of his first challenges will be the recovery of category 1 in air safety. Under Rodríguez's leadership, a series of acts of corruption came to light which, despite being denounced by people close to the general himself, did not receive the necessary attention. In addition, under the management of the now former head of the AFAC, the air safety category 1 was lost, and, after almost 17 months, it has not been possible to recover it. Vallín was in charge of the air services of the National Guard, commander of the Mexican Air Force in the capital of the country, as well as deputy military and air attaché at the Mexican embassy in Nicaragua. *www.elfinanciero.com.mx/empresas/2022/10/17/destituyen-a-carlos-munguia-de-la-direccion-de-la-afac-otro-militar-ocupara-su-lugar/* 17/10/2022.

COFECE authorizes investment of US airline in a Mexican airline.

The Federal Antitrust Commission (COFECE) authorized the commercial alliance between a U.S. airline and a Mexican airline, which contemplates a capital investment of 150 million dollars. This is one more step to materialize an alliance that will strengthen a competitive environment with a much broader offer between Mexico and the United States. The agreement will allow the airlines, both in the low-cost segment, to have cross access to each other's loyalty programs, codeshares, sales systems, and route networks to operate joint flights. However, the commercial agreement is still pending approval by the U.S. Department of Transportation. *www.expansion.mx/empresas/2022/10/17/cofece-autoriza-inversion-allegiant-en-viva-aerobus* 17/10/2022.

ICAO reschedules Mexico's audit for 2024.

The International Civil Aviation Organization (ICAO), decided to reschedule the audit of Mexico from November 2022 to early 2024. An audit that determines Mexico's ability to effectively maintain its safety oversight systems. Said audit is carried out every 10 years for member countries of the organization and was scheduled for December 2021 in Mexico but was postponed to November 2022 as a result of the downgrade to Category 2 by the U.S. Federal Aviation Administration. This audit examines eight categories, including: legislation, organization, licensing, operations, airworthiness, accident investigation and others. The last time this audit was conducted in Mexico was in 2012 where it received a score of 85.06 out of a maximum of 100. This signaled effective implementation of ICAO standards at 70%. *www.a21.com.mx/organismos/2022/10/20/reprograma-oaci-auditoria-mexico-para-2024* 20/10/2022.

Mexico's air safety recovery is far off this 2022.

The recovery of category 1 in air safety was initially estimated to be within a period of four months, following the notification of the Federal Aviation Administration (FAA); now, it has been prolonged and is estimated to occur in March 2023. The progress in repairing the deficiencies has been slow and documentation released to the media has assured that it has solved the changes regarding legislation, incorporation of mandatory circulars, and others, but the Mexican authority has yet to prove said implementations. The return to category 1 would allow for Mexican airlines to increase their frequencies, open new flights, and incorporate new aircrafts into their fleets on routes to and from the United States. *www.elfinanciero.com.mx/empresas/2022/10/24/recuperacion-de-la-categoria-1-aerea-hasta-marzo-del-2023/* 24/10/2022.

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