

# coelum.

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10 Billion Dollars... and counting...

The cost of a stupid decision.

by Carlos Sierra

NOVEMBER NEWS on  
Mexican Aviation



COELUM: 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 to how high above did that right extended to. Ad coelum et ad inferos, they discussed, meaning that their right of property would extend as high up to the heavens and down to hell.

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## 10 Billion Dollars... and counting... The cost of a stupid decision.

by Carlos Sierra.

As it was naturally expected, the consequences that the cancellation of the New Mexico City Airport (NAIM) could produce were underestimated or at least grossly miscalculated by the newly inaugurated government.

The recently announced attempt to purchase the holding interests of a portion of the issuance placed in international markets with the funds available in the existing trust has been rejected by the bond holders. Such attempt to purchase these bonds was carefully crafted by the new administration in order to acquire a percentage of investment in such bonds that could be sufficient to manage the decisions to be made within the process, including the cancellation of the project or the change in guarantees.

*“Accidental neoliberalism or improvised incompetence. However we can call it, this is a total self-inflicted disaster that will define our country and this administration for decades to come.”*

The idea of the government is not that the bond placement would be cancelled but that the investment resultant therefrom would be transferred for the development of the Santa Lucia Airport. With the intended purchase the government wanted to give certainty to the investors in such bonds and to be able to make the necessary investment decisions to transfer the project.

Considering the rejection, the alternative, in order not to incur in the default of such obligations is not only to continue the construction of the new airport in Texcoco for the time being, but to negotiate the purchase of bonds at either a higher price, or under different terms than such initially proposed by the government in the purchase prospectus.

In the event of a default, the government would face the obligation to pay off the full amount invested in such bonds by the different investors in the international markets, some of which are very important, solvent and influential institutions that have substantial leverage to negotiate and all the time available to do so. Such payment contingency for the Mexican government would be north of 6 billion US Dollars.

The amount available in the current trust, which was offered by the government to purchase existing bonds at a value of 0.90 USD per bond is equivalent to 1.8 Billion USD<sup>1</sup>. The amount, while rejected, could be increased at the cost of the government to even more than 1.00 USD to make the offer more attractive. The problem however is that this was one reason why the purchase was rejected. The main reason being that the offered guarantees that constitute the backup of such bonds would change from the current viable and studied development of the NAIM to the improvised preliminary -and very possibly inviable- project at

1.- Sum that is higher than the current value of the bonds at approximately 0.78 USD in order to pay a premium for the quick agreement by bond holders to sell.

Santa Lucia, which would also produce very different cash flows and in different -not well studied yet- time-frames than the current project.

The government is in a rush to secure this sale before it can introduce the federal budget fore 2019 before the Mexican congress, which needs to be presented by December 15 of this year. The bond holders however are in no rush to negotiate these terms. Time is against the Mexican government.

It is important to clarify that any amounts that the government might negotiate would need to be paid from federal tax funds. If a default is incurred on the other hand by suspending the works or by failing to reach an agreement with the bond holders, the exposure, only in respect to the portion of the financing structure for the NAIM, would be, as mentioned above of more than 6 billion USD.

The above amount would need to be added to:

- The 130,000 Million MxP that were placed under the Fibra E and which are currently held principally by AFORES<sup>2</sup>;
- The approximately 60,000 Million MxP that have been physically invested in the construction of the NAIM, plus any amount that continues to be invested while the construction continues;
- The amounts payable to contactors and other parties involved in the current construction of the airport; and
- Whatever might be the cost of building the Santa Lucia airport.

In the end. The cancellation of the project, as we have mentioned before, could objectively cost the federal government more than 10 Billion USD. This amount will have to be defined before December 15 in order to be budgeted for 2019.

All of these funds, which could be used for multiple purposes will inevitably go to institutional investors, to contractors, other investors and to waste. All this kind of rings-a-bell that takes us back to the rescue of Mexican banks that was implemented after the 1994 financial crisis by the government of president Ernesto Zedillo under which the federal government acquired all defaulted debt of Mexico's commercial banking system to prevent their failure<sup>3</sup>.

The backers and members of the current new government criticized this rescue for years, alleging that it was a waste of people's money to save defaulted debt in favor of the rich and of international interests.

Now that the real numbers and implications of the capricious cancellation of the NAIM are finally coming to light, where will these 10 Billion USD be going to? Fairly so because they are entitled to it, once again: the rich and international interests. The very same result they criticized for decades.

Accidental neoliberalism or improvised incompetence. However we can call it, this is a total self-inflicted disaster that will define our country and this administration for decades to come.

2- Workers retirement funds.

3- Rescue that was implemented through the use of funds in the Banking Fund for Protection of Savings (FOBAPROA).

## **ASA and UAEM sign academic training agreement.**

Airports and Auxiliary Services (ASA) signed a General Agreement on Academic Training with the Autonomous University of the State of Mexico (UAEM) with the aim of strengthening education with international quality. The alliance of these two institutions seeks to prepare new professionals for the immediate demand of the Mexican air sector and the increase of the academic offer for the development of the professional aeronautical sector. <https://a21.com.mx/organismos/2018/11/08/asa-y-uaem-firman-convenio-de-formacion-academica> November 08, 2018.

## **Changes in ICAO Annex 14 will allow airports to grow: ACI.**

The Airport Council International (ACI) celebrated the last modifications made to Volume I Annex 14 of the International Civil Aviation Organization (ICAO), which will allow airports to offer greater efficiency and capacity. The changes, which went into effect on November 8, will provide airports with the opportunity to make changes to airspace operations to boost efficiency, reduce the potential for delays and promote improvements that increase capacity. <https://a21.com.mx/normatividad/2018/11/09/cambios-en-anexo-14-de-oaci-permitiran-aeropuertos-crecer-aci> November 09, 2018.

## **Pilots call for new president to reconsider new airport.**

As it is an “essential” project for the development of the country, as well as to give certainty to a key sector such as the airline industry, the College of Pilots Aviators of Mexico asked the incoming Government to reconsider continuing and completing the construction of the New International Airport of Mexico City. <http://a21.com.mx/aeropuertos/2018/11/30/piden-pilotos-amlo-reconsiderar-naicm> November 14, 2018.

## **Senate ratifies aviation agreements with Kuwait, Saudi Arabia and Qatar.**

Chamber of Senators has ratified three agreements on air services, signed by Mexico with the nations of Kuwait, Saudi Arabia and Qatar, which establish the rights of traffic and operation, setting rates and the possibility of entering into codeshare agreements between the airlines of the countries involved. The three agreements establish traffic rights officially known as air freedoms that will be exercised by Mexican airlines and their Kuwaiti, Saudi and Qatari counterparts as the right to fly over the national territory without landing therein (first freedom); the right to make stops in national territory for non-commercial purposes (second freedom); right to make stopovers in national territory in accordance with the points specified in the Agreement for the purpose of embarking and disembarking passengers, cargo and mail in international traffic (third and fourth freedom). These agreements open the possibility of shared codes between Mexican and middle east airlines.. <https://a21.com.mx/normatividad/2018/11/14/senado-ratifica-acuerdos-aereos-con-kuwait-arabia-saudita-y-catar> November 14, 2018.

## **Senator asks for 3 years in prison for stealing personal data with drones.**

Senator Claudia Edith Anaya Mota, of the Parliamentary Group of the Institutional Revolutionary Party (PRI), presented a bill to implement penalties ranging from three months to three years in prison for users of Remotely Piloted Aircraft (RPAS) that use these devices for the purpose of illegally seizing personal data. The problem lies in establishing a regulatory framework in the penal framework for these behaviors that are not properly regulated today, incorporating the improper use of RPAS as a means of committing a crime. <https://a21.com.mx/normatividad/2018/11/19/senadora-pide-3-anos-de-carcel-por-robo-de-datos-personales-con-drones> November 19, 2018.

*In this month extract was prepared by J. Estrada, José Manuel Muñoz, J. Dorantes, Arturo Frago.*

## **ASA and IATA will give course “Aeronautical information management”.**

The Airports and Auxiliary Services (ASA) and the International Air Transport Association (IATA) will provide the course Aeronautical International Management at the International Center for Airport Instruction and Auxiliary Services. The training, derived from the collaboration agreement between both institutions, aims to perceive the implications in terms of security related to quality and data storage and will be taught face-to-face with a duration of 40 hours spread over five days. <https://a21.com.mx/organismos/2018/11/26/asa-y-iata-impartiran-curso-gestion-de-la-informacion-aeronautica> November 26, 2018.

## **Passenger Traffic Growth and Aerospace Jobs on the Horizon as AMLO’s Day 1 Approaches.**

As the projected final day of NAIM’s construction project in Texcoco approaches, MITRE insists that there is no need for an added complexity in building it in Santa Lucia. The project will reach an advancement of 36-percent by the time the new federal administration enters office on December 1. Mexican airports kept a solid passenger traffic thrust. As the International Airport of Cancun prepares to receive its 25 millionth passenger, ASA has increased the passenger traffic of its airport network by 11.8 percent on 2017’s figures. <http://www.aerospacemx.com/the-week-in-aviation-passenger-traffic-growth-and-aerospace-jobs-on-the-horizon-as-amlos-day-1-approaches/> November 26, 2018.

## **Pilots requested ICAO intervention for cancellation of NAICM.**

Considering that the project of the New Mexico City International Airport (NAICM) is the most viable and safest alternative proposed by the incoming Government to develop an airport network in the Valley of Mexico, the Association of Pilots of Aviators of Mexico (CPAM) requested the intervention of the International Civil Aviation Organization (ICAO) to ratify its opinion about the suitability of the airport work in Texcoco. In a letter addressed to Dr. Olumuyiwa Benard Aliu, president of the ICAO Council, as well as Dr. Fang Liu, general secretary of the organization, the CPAM urged them to contact the administration of Andrés Manuel López Obrador to ratify the opinion given by their specialists. <https://a21.com.mx/aeropuertos/2018/11/28/piden-pilotos-intervencion-de-oaci-por-cancelacion-de-naicm> November 28, 2018.

## **Retired bid for the purchase of the presidential plane.**

To consider as a “campaign occurrence” of Andrés Manuel López Obrador the decision to put the fleet of presidential aircraft on sale, Gustavo Jiménez-Pons withdrew his intention to buy the Boeing 787-8 Dreamliner, better known as “José María Morelos and Pavón “. The president of GBS Air Enterprises, a company that last August offered 1.9 billion pesos to the incoming government to acquire the B787, made this determination considering that the next president did not take his proposal seriously. <https://a21.com.mx/fuerza-aerea/2018/11/29/siempre-no-retiran-oferta-por-avion-presidencial> November 29, 2018.

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Attorney at law by the 'Universidad Nacional Autónoma de México' (UNAM), has coursed post-graduate studies in civil and commercial law at the 'Escuela Libre de Derecho', international law courses imparted by Duke University and the 'Universite Libre de Bruxelles', aviation contracts law at IATA and LLM studies in Air and Space Law at Leiden University in the Netherlands. Mr. Sierra has been a professor of contracts law at UNAM and after being in-house counsel for Mexicana Airlines, he has been in private practice for eighteen years advising lessors and financiers in transactional work related to the leasing and finance of aircraft and the enforcement of their rights during default, liquidation and bankruptcy proceedings. Mr. Sierra has written several articles related to aircraft finance and leasing, the Cape Town Convention and Protocol, repossession of aircraft, aviation law and Mexican commercial law. He is currently chair of the legal advisory panel of the Aviation Working Group, officer of the Aviation Committee of the International Bar Association and member of the international advisory committee of the Leiden Foundation of Air and Space Law. Mr. Sierra is also an instructor for the International Air Transport Association (IATA) on aircraft leasing and acquisitions and has been named by Chambers as the most prominent aviation attorney in Mexico for the past three years.

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