



Agenda Item 3: Institutional aspects for the management and control of multinational systems and facilities

a) Implementation of the South American Air Navigation and Safety Organisation

(Presented by the Secretariat)

SUMMARY	
This working paper presents to the Twelfth Meeting of Civil Aviation Authorities of the South American Region (RAAC/12) the status of implementation of the South American Air Navigation and Safety Organisation.	
References: <ul style="list-style-type: none">- Final proceedings of the Diplomatic Conference held in Brasilia on 7-9 December 2009.- Agreement for the Establishment of the <i>South American Air Navigation and Safety Organisation</i>- Report of the LACAC legal panel on the analysis of the Agreement for the Establishment of the South American Air Navigation and Safety Organisation, Buenos Aires, August 2010.- Report of the meeting of the <i>ad-hoc</i> group to analyse the most appropriate framework for the institutionalisation of the SRVSOP, Lima, 19-20 May 2011.- Report of the 23rd meeting of the SRVSOP General Board, Cartagena de Indias, 26 July 2011.	
ICAO strategic objectives:	<i>A – Safety</i>

1. Background

1.1 Pursuant to Conclusion 11/3 of the RAAC/11 meeting, a Diplomatic Conference was held on 7-9 December 2009 in the city of Brasilia, Brazil, for drafting and adopting the definitive text of the Agreement for the Establishment of the *South American Air Navigation and Safety Organisation*.

1.2 This conference produced a Final Act that was signed by the plenipotentiaries of Argentina, Bolivia, Brazil, Chile, Paraguay and Uruguay and which appears in **Appendix A**, whereby the text of the Agreement for the establishment of the cited organisation, shown in **Appendix B**, was adopted, together with three resolutions encouraging the States to sign and ratify the Agreement, defining its headquarters and formalising an ICAO technical cooperation project for its implementation.

1.3 The Agreement was reviewed by the 21st meeting of the SRVSOP General Board (Santiago de Chile, 22 March 2010), where some States expressed their concern for the process proposed for the integration of the SRVSOP into the South American Air Navigation and Safety Organisation. The meeting agreed that the institutionalisation of the SRVSOP required a more in-depth study.

1.4 The SRVSOP General Board entrusted the study to the LACAC Panel on Political, Economic and Legal Aspects of Air Transport (GEPEJTA), which met in August 2010 to perform this task, the results of which appear in **Appendix C**.

1.5 The SRVSOP Board reviewed the results of the study conducted by GEPEJTA at its 22nd meeting (Lima, 6-7 December 2010) and agreed to create an *ad-hoc* group to analyse the most appropriate framework for the institutionalisation of the SRVSOP, in light of the comments contained in the study. This group met in Lima on 19-20 May 2011 and formulated the following recommendation, which was endorsed by the 23rd meeting of the SRVSOP General Board (Cartagena de Indias, 26 July 2011):

RECOMMENDATION INST 1

The *ad-hoc* group designated to analyse the most appropriate framework for the institutionalisation of the SRVSOP recommends the following to the SRVSOP General Board:

1. The allocation of resources for entrusting the ICAO South American Regional Office with defining the terms of reference and composition of a team of three experts to conduct a technical, legal and economic study of the status of ICAO regional technical cooperation projects that seek to institutionalise their achievements for the benefit of all the States that participate in them.
2. Request the ICAO South American Regional Office to coordinate and share the costs associated to this task with those of Project RLA/03/901 - SAM REDDIG related to the institutionalisation of the REDDIG, with a view to the establishment of one single RMO.
3. Instruct the technical team, based on the progress made in the establishment of the South American Air Navigation and Safety Organisation and the results of the GEPEJTA meeting, to propose the necessary changes for achieving the most appropriate composition of a regional multinational organisation with legal status and managerial and financial autonomy for contracting, acquiring, receiving, managing, operating, maintaining, protecting and disposing of its goods and services, focused on managing and operating the existing multinational services, such as the Regional Safety Oversight Cooperation System, REDDIG and CARSAMMA, with the possibility of including other multinational services as required.
4. That ICAO, through secondment agreements with the States or contracts, select the experts with the competencies required for being part of the technical team referred to in paragraph 1.
5. That the terms of reference of the technical team take into account the cost that would be incurred by States to finance the RMO, as well as its geographical scope, which should not exclude States currently participating in projects under implementation and other States of the Region that might wish to adhere.
6. That the report of the technical team be circulated to SRVSOP member States for comments, which would be taken into account and included in the proposal to be submitted to the SRVSOP General Board for approval and identification of subsequent actions, including coordination in the area of air navigation with the respective forums.

2. Discussion

2.1 The process of accession to, and ratification of, the Agreement and the activities for the establishment of the South American Air Navigation and Safety Organisation have been put on hold, and a decision is required by the Civil Aviation Authorities of the Region in order to define the steps to be followed with respect to the institutionalisation of the arrangements for the provision of common facilities to States participating in the regional projects currently under way.

2.2 In summary, the Agreement approved in Brasilia has some issues that prevent its ratification by States, mainly:

- a) The Agreement for the establishment of the South American Air Navigation and Safety Organisation does not permit the inclusion of States from outside South America, except through the signing of an agreement between the State and the new Organisation once it has been established.
- b) Its restricted geographical scope, which excludes States that are currently participating in projects under way.
- c) The need to clearly define the costs involved in the operation of the RMO and compare them to the current management system based on the ICAO regional technical cooperation projects.
- d) The text of the Agreement should be more precise as to RMO objective and functions.

2.3 The debate has enabled States to consolidate their position with respect to the following topics:

- a) The way to establish a more effective RMO would be through another diplomatic conference.
- b) One single RMO can take over the services currently being provided to States under projects RLA/03/901 SAM REDDIG and RLA/99/901 SRVSOP, and there is no conflict with respect to its service provider and regulatory functions, since the SRVSOP is not an effective regulator but rather a provider of regulatory development services, assistance to States in certification and surveillance functions, and training in these areas.
- c) As regional air navigation and safety integration processes become consolidated, the figure of an RMO becomes more necessary for their institutionalisation.
- d) The implementation of an RMO is a complex topic.
- e) Regional projects RLA/99/901 SRVSOP and RLA/03/901 could share resources for conducting the activities required for their institutionalisation

2.4 Accordingly, the Meeting of Civil Aviation Authorities could consider furthering the institutionalisation of the REDDIG and the SRVSOP by applying the following strategy:

- a) Supporting the actions recommended by the *ad-hoc* group designated to analyse the most appropriate framework for the institutionalisation of the SRVSOP, through Projects RLA/03/901 SAM REDDIG and RLA/99/901 SRVSOP, which could share the funding.

- b) Review of the agreement for the establishment of the RMO in order to find the most appropriate structure for a regional multinational organisation with legal status and autonomy for contracting, acquiring, receiving, managing, operating, maintaining, protecting and disposing of its goods and services, focused on the management and operation of the existing multinational services, such as the Regional Safety Oversight Cooperation System, REDDIG and CARSAMMA, with the possibility of including other multinational services as required.
- c) Determine the geographical scope of the RMO, which should not exclude those States currently participating in projects under implementation and other States of the Region that might wish to adhere.
- d) The development of its own by-laws for the staff involved in Projects RLA/03/901 SAM REDDIG and RLA/99/901 SRVSOP.
- e) Determine the RMO funding cost that would be incurred by the States, and its relationship with the costs of existing ICAO technical cooperation projects.

2. **Suggested action**

2.1 The 12th meeting of Civil Aviation Authorities of the South American Region is invited to:

- a) Take note and comment on the information provided in this working paper.
- b) Decide on the proposal contained in paragraph 2.4.



APPENDIX A

FINAL PROCEEDINGS

Diplomatic Conference for Drafting and Adopting the Final Text of the Agreement for the Establishment of the

SOUTH AMERICAN AIR NAVIGATION AND SAFETY ORGANISATION

Brasilia, Brazil, 7-9 December 2009

The plenipotentiaries of the States of the South American Region of the International Civil Aviation Organization (ICAO), gathered in a Diplomatic Conference held in Brasilia, Brazil, on 7-9 December 2009, under the auspices of ICAO, to examine the draft text of the Agreement for the Establishment of the South American Air Navigation and Safety Organisation.

The governments of the following six States attended the Conference and duly presented their credentials:

Argentina
Bolivia
Brazil
Chile
Paraguay
Uruguay

The representatives of the following States also attended:

Ecuador
Peru

The Conference unanimously elected Ambassador Raymundo Santos Rocha Magno (Brazil) as Chairperson and also unanimously elected as Vice-Chairpersons:

First Vice-Chairperson	Mr. Jose Huepe (Chile)
Second Vice-Chairperson	Mr. Gustavo Beguet (Argentina)

The Secretary of the Conference was Mr. Franklin Hoyer, Regional Director of the ICAO South American Office, who was supported by Mr. Denys Wibaux, Director of Legal and Foreign Affairs of ICAO, Mr. Carlos Stehli, Deputy Director of the ICAO South American Regional Office, and Mr. Benoit Verhaegen, Legal Officer of the Legal and Foreign Affairs Office of ICAO.

The Conference created a Plenary Commission and the following Committees:

Credentials Committee:

Chairperson: Mr. Jesus Iglesias (Uruguay)

Members:

Bolivia
Paraguay

Drafting Committee:

Chairperson: Mr. Carlos Vallarino (Argentina)

Members:

Brazil
Uruguay
Paraguay
Chile

As a result of its discussions, the Conference adopted the text of the *Agreement for the Establishment of the South American Air Navigation and Safety Organisation*.

Pursuant to its article 20, the Agreement is open for signature from 9 December 2009 to 30 June 2010, in Brasilia, and afterwards, at ICAO Headquarters until its effective date.

The Conference adopted the following resolutions by consensus:

RESOLUTION No. 1

ON ENCOURAGING STATES TO SIGN AND RATIFY THE AGREEMENT FOR THE ESTABLISHMENT OF THE SOUTH AMERICAN AIR NAVIGATION AND SAFETY ORGANISATION

THE CONFERENCE,

AWARE of the importance of establishing a regional mechanism for the systematic and efficient implementation, management, and consolidation of multinational air navigation facilities and services with a view to the implementation of the global ATM system, and to the provision of safety assistance;

RECOGNISING the efforts made by the States within the Caribbean/South American Regional Planning and Implementation Group (GREPECAS) mechanism and the Meetings of Civil Aviation Authorities, supported by the technical cooperation mechanism of ICAO, to develop guidance material on an agreement for the establishment of an international organisation in the Region;

NOTING the results of the Fourteenth Meeting of the Caribbean/South American Regional Planning and Implementation Group (GREPECAS) and of the Eleventh Meeting of Civil Aviation Authorities of the South American Region (SAM) of the International Civil Aviation Organization (ICAO); and

HAVING DRAFTED the text of the *Agreement for the Establishment of the South American Air Navigation and Safety Organisation*;

RESOLVES:

TO INVITE the States to sign and ratify as soon as possible the *Agreement for the Establishment of the South American Air Navigation and Safety Organisation*, adopted on 9 December 2009, in Brasilia, and to deposit the ratification instruments with the International Civil Aviation Organization (ICAO), pursuant to article 20 of that Agreement; and

TO INVITE the Secretary General of ICAO to immediately bring this Resolution to the attention of the States of the South American Region of ICAO for the purpose cited above.

RESOLUTION No. 2

ON THE ESTABLISHMENT OF THE HEADQUARTERS OF THE SOUTH AMERICAN AIR NAVIGATION AND SAFETY ORGANISATION

THE CONFERENCE,

TAKING INTO ACCOUNT Article 6 of the Agreement, whereby the Headquarters of the Organisation shall be determined based on the advantages offered by States for hosting it in participating State;

TAKING INTO ACCOUNT the outcome of the Eleventh Meeting of Civil Aviation Authorities of the South American Region (SAM) of the International Civil Aviation Organization (ICAO), specifically Conclusion 11/4 formulated by that meeting concerning the documentation describing the minimum requirements for the establishment of the Headquarters of the Organization and the request to ICAO to circulate it to the States; and

AWARE of the need to define, as soon as possible, the Headquarters of the organisation in order to move forward in its implementation;

RESOLVES:

TO INVITE the States of the South American Region of ICAO to submit proposals to the ICAO Regional Office for South America pursuant to Article 6 of the Agreement to determine the headquarters of the organisation; and

TO INVITE the Director of ICAO South American Regional Office to provide assistance and coordinate, as soon as possible and without delay, with the States of ICAO South American Region so that the States may submit proposals on the headquarters of the organisation.

RESOLUTION No. 3

ON ICAO ASSISTANCE TO EXPEDITE THE IMPLEMENTATION OF THE SOUTH AMERICAN AIR NAVIGATION AND SAFETY ORGANISATION

CONSIDERING that the Fourteenth Meeting of the Caribbean/South American Regional Planning and Implementation Group (GREPECAS) has recommended that the States interested in implementing multinational services and systems through an international regional organisation, consider resorting to ICAO technical cooperation to expedite the implementation of this organisation;

AWARE of the success achieved by the technical cooperation mechanism in the implementation in the Region of multinational systems in the area of digital networks, such as the South American Digital Network (REDDIG) and other regional endeavours, such as RVSM implementation;

RECOGNISING that the implementation of the organisation represents a complex process that requires the necessary assistance for its planning and implementation, in coordination with the participating States and mainly with the host State;

TAKING INTO ACCOUNT that the Eleventh Meeting of Civil Aviation Authorities of the South American Region (SAM) had reviewed a regional technical cooperation project document developed by ICAO and had formulated Conclusion 11/5 for the States to consider such document;

RESOLVES:

TO INVITE the States of the ICAO South American Region to coordinate with the ICAO Regional Office for South America, as soon as possible and without delay, for the establishment of a technical cooperation project to implement the South American Air Navigation and Safety Organisation;

A statement submitted by Argentina on the issue of the Falkland Islands was also negotiated and approved by the Diplomatic Conference. This statement is part of the Conference documentation.

In witness whereof, the attending States sign these proceedings:

By Argentina Minister Gustavo Beguet (Signed)

By Bolivia Mr. Raul Velasco Ramos (Signed)

By Brazil Ambassador Raymundo Santos Rocha Magno (Signed)

By Chile Mr. Jose Huepe Perez (Signed)

By Paraguay Minister, Didier Cesar Olmedo (Signed)

By Uruguay Mr. Daniel Olmedo

Brasilia, 9 December 2009

By Brazil Ambassador Raymundo Santos Rocha Magno

By Chile Mr. Jose Huepe Perez

By Ecuador Mr. Rodrigo Marcelo Aguilar

By Paraguay Minister, Didier Cesar Olmedo

By Peru Minister, Hugo Flores

By Uruguay Mr. Daniel Olmedo (Signed)

Brasilia, 9 December 2009

APPENDIX B**AGREEMENT FOR THE ESTABLISHMENT OF THE SOUTH AMERICAN AIR
NAVIGATION AND SAFETY ORGANISATION**

The undersigned States:

1. Taking into account that communication, navigation and surveillance systems and air traffic management (CNS/ATM) are fully compatible with the provisions and principles of the 1944 Chicago Convention on International Civil Aviation, as well as with the standards and recommended practices of the International Civil Aviation Organization (ICAO);
2. Asserting that States must preserve, at all times and under all circumstances, their authority and responsibility concerning air navigation control, and compliance with safety oversight standards within their sovereign airspace, pursuant to Article 28 of the 1944 Chicago Convention on International Civil Aviation;
3. Echoing the appeal for cooperation and mutual assistance amongst the States formulated by the ICAO Assembly in order to achieve the highest level of uniformity in the provision of communication, navigation and surveillance services and air traffic management;
4. Noting the importance of regional initiatives for the development and planning of international air aviation principles and techniques, the enhancement of safety in the sphere of international civil aviation to optimise the operation of CNS/ATM systems and to improve effective compliance with their responsibilities in terms of safety oversight;
5. Recognising the need for regional implementation of CNS/ATM systems, and cooperation on safety issues with a view to global air traffic management through the application of ICAO standards, recommended practices, and guidelines;
6. Recalling that ICAO encourages States to foster the establishment of regional or sub-regional partnerships to cooperate in the development of solutions to common problems in order to strengthen their individual safety oversight capabilities;
7. Aware of the need to establish an equitable system to determine, distribute, and recover the cost of providing services to users, taking into account primarily Article 15 of the 1944 Chicago Convention;
8. Considering that a suitable legal framework is required to govern the operation of regional CNS/ATM systems and safety oversight cooperation, giving access to as many States as possible with a view to applying the principle of uniformity to the standards and procedures related to international air navigation and safety;

Have agreed on the following:

Article 1 - Scope

The States of the South American (SAM) Region of the International Civil Aviation Organization (ICAO) will create in the Region the SOUTH AMERICAN AIR NAVIGATION AND SAFETY ORGANISATION for the provision and management of multinational services and facilities, in order to facilitate the implementation of the Air Traffic Management (ATM) operational concept with a view to the global ATM, and to provide assistance on safety oversight and other matters, in accordance with ICAO standards and recommended practices.

Article 2- Legal Status

The Organisation will have legal status at international level and in each participating State, will exercise rights and obligations, and will have management and financial autonomy for contracting, acquiring, and disposing of its goods and services, as well as for filing legal actions, appearing in court, and appearing in out-of-court proceedings.

Article 3- Purpose

The purpose of the Organisation is to provide and manage the multinational services and facilities contained in the Regional Air Navigation Plan, in accordance with Article 28 of the Chicago Convention, and to assist in the effective fulfilment of the safety oversight responsibilities of the States, in accordance with the respective by-laws to be defined, in the territory of the Contracting Parties and in all areas of responsibility covered by Regional Air Navigation Agreements and by any bilateral or multilateral agreements that may be established between other States and bodies and the Organisation.

Article 4- Functions and Duties

The Organisation shall have the following functions and duties:

- a) to exercise the rights related to the provision and management of the services listed in the previous article, and to set and collect the fees and rates related to them;
- b) to establish an economic policy for achieving financial equilibrium, through the procurement of resources of its own;
- c) to propose uniformity of national regulations and procedures on air navigation services and other matters to participating States, in accordance with ICAO standards and recommended practices;
- d) in accordance with the Chicago Convention, to conduct the required technical, operational and administrative studies and to take the corresponding actions in order to meet its objective, taking into account the evolution and development of international air aviation;
- e) to recommend to the participating State the relevant amendments to the applicable Regional Air Navigation Plan;
- f) to train its personnel properly and on an on-going basis;
- g) to establish the necessary links with the States and International Organisations for the fulfilment of its functions and duties;
- h) to request from, and deliver to, competent authorities all relevant information, in addition to reporting any alleged infringement to applicable air navigation standards within the scope of their responsibilities;
- i) to assess the standardisation of systems within the territory of the participating State, in accordance with ICAO standards and recommended practices;
- j) to study, advise, recommend, facilitate, decide on, and address all matters related to the normal or ordinary development of the Organisation; and
- k) to conduct any activity related to its purpose and within its capacity, as required by the participating States.

Article 5 - Liability and Insurance

The Organisation shall cover the risks derived from its liability for damages to third parties resulting from the operation of the facilities or the provision of services, by taking the corresponding insurance policies.

Article 6 - Headquarters

The Organisation shall have its headquarters in a city of a participating State to be determined based on the advantages offered of its establishment, and to which end the respective Headquarters Agreement will be signed with said State.

Article 7 - Structure

The Organisation shall consist of an Executive Council, an Executive Director, and the technical, operational, and administrative divisions required and appropriate for the assigned functions.

Article 8 - Executive Council

- 1- The Executive Council will be the highest body of the Organisation and will be made up by one representative of each participating State. Each shall have an alternate. Both will be designated by the participating State and shall have an adequate level of competence on civil aeronautics.
- 2- The Executive Council shall have a chairperson and a vice-chairperson who will be elected amongst its members on a rotational basis and for a three-year period, with the possibility of being re-elected only once.

Article 9 – Functions of the Executive Council

The Executive Council shall have the following functions:

- a) to adopt policies on the operation of the Organisation and the management of the multinational systems;
- b) to set the fees and rates to be paid by users of the services provided by the Organisation;
- c) to appoint the Executive Director and the technical, operational, and administrative directors, at the proposal of the Executive Director;
- d) to approve the procurement of the insurances policies mentioned in Article 5 with companies and associations it may deem appropriate;
- e) to approve the annual budget and any modifications to it;
- f) to approve the internal by-laws and regulations of the Organisation, and to generate amendments or modification thereto;
- g) to approve proposals and conditions for loans to be obtained in order to meet the objectives of the Organisation;
- h) to consider the proposals of amendment or modification to this Agreement; and
- i) to determine personnel hiring policy.

Article 10 - Executive Director

The Executive Director shall be a national from any of the participating States and shall be elected by majority at the Executive Council. The Executive Director will hold its position in accordance with that established in the by-laws.

Article 11- Functions of the Executive Director

The Executive Director shall be the legal representative and executive manager of the Organisation and shall have the following duties:

- a) to sign the documentation required for the operation of the Organisation within the scope of its competencies;
- b) to submit all reports required by the Executive Council;
- c) to hire and manage the personnel required by the Organisation in accordance with the policy established by the Executive Council;
- d) to submit to the Executive Council the nomination of the technical, operational, and administrative directors for its approval;
- e) to submit to the Executive Council the draft amendments or modifications to the by-laws and internal regulations of the Organisation;
- f) to make projections and propose to the Executive Council the fees and duties to be collected by the Organisation;
- g) to prepare the annual budget and advise the Executive Council on this matter;
- h) to act as Secretary of the Executive Council; and
- i) to perform any other task as may be entrusted by the Executive Council.

Article 12 - Decision-Making Modalities

1. Each participating State, through its representative, will have one vote in the Executive Council.
2. Executive Council meetings will require a quorum of two-thirds of its members in order to be held.
3. Decisions shall be adopted by two-thirds of the attendees, except in those cases in which it has been expressly defined that a unanimous decision is required, as established in the by-laws. Decisions shall be binding for each participating State.

Article 13 - Personnel

1. The Organisation will hire nationals of the participating States, except under duly justified exceptional circumstances or situations.
2. The personnel will have their own labour regime, and the respective regulations will be drafted and approved based on ICAO regulations.

Article 14 - Financial Regime

1. The Organisation will be a non-profit organisation that will operate under a cost-recovery scheme, and shall be financed through mandatory contributions made by the participating States, voluntary contributions, and other sources.
2. The Organisation shall aim at achieving financial equilibrium, primarily taking into account article 15 of the Chicago Convention.

Article 15 - Audits

The Organisation shall be subject to internal and external audits, as may be established in the respective by-laws.

Article 16 - Privileges and Immunities of the Organisation

Within the scope of its official activities:

- a) The Organisation, its goods and assets, wherever located and by whomsoever held, shall have jurisdictional immunity, except when such immunity has been expressly waived. The waiver of jurisdictional immunity shall not imply a waiver of execution immunity.
- b) The premises of the Organisation shall be inviolable. The goods and assets of the Organisation, wherever located and by whomsoever held, will be exempt from registration, requisition, confiscation, and any other form of interference, whether by executive, administrative, court, or legislative order.
- c) The files of the Organisation and all documents, in general, belonging to it or held by it, are inviolable wherever located.
- d) The Organisation may hold any type of funds or currencies, and hold its accounts in any currency without being subject to control, regulations, or moratorium of any kind. Moreover, the Organisation is free to transfer its funds and currencies from one country to another, or from one place to another within the same country, and to convert the currencies held by it into any other currency.
- e) In exercising the rights granted under the previous item, the Organisation will pay due attention to any concern of the government of any participating State to the extent it deems appropriate without prejudice to its own interests.

Article 17 - Immunities and Privileges of Officials

- 1- The Executive Director and the high officials of the Organisation will enjoy the privileges and immunities granted to diplomat agents under the 1961 Vienna Convention Regarding Diplomatic Relations.
- 2- Administrative and technical personnel of the Organisation will enjoy the functional privileges and immunities foreseen for such personnel in the cited Convention.

Article 18 - Tax and Customs Exemptions

Within the scope of its official activities, the Organisation, its assets, income, and other goods will be exempt, within the territory of the participating State, from:

- a) all direct liens, except those that constitute payment for services provided;
- b) customs duties and prohibitions and restrictions on imports and exports of items for its official use, it being understood that items imported with such exemption will not be sold in the country into which they were imported; and

- c) customs duties, as well as prohibitions and restrictions on imports and exports of its publications.

Article 19 - Dispute Settlement

The Parties will resolve any dispute related to the interpretation or implementation of this Agreement through direct consultations. If the dispute is not settled through direct consultations within three months of starting such consultations, any of the Parties involved may, by written request, submit it to the mediation of the Executive Council. If the dispute is not settled through direct consultations or mediation, the Parties, by mutual agreement, may try to resolve it by any of the other dispute settlement mechanisms mentioned in the Charter of the United Nations.

Article 20 - Signing and Ratification

1. This Agreement will be open for signing by the States of the ICAO South American Region at the Brazilian Ministry of Foreign Affairs until 30 June 2010, and then at ICAO Headquarters until it enters into effect.
2. This Agreement will be subject to ratification, and the respective ratification document must be deposited with ICAO, which shall notify the governments of the signatory and contracting parties about all the ratification instruments of the Agreement that have been deposited.

Article 21- Effective Date

1. This Agreement shall enter into effect sixty days after ratification instruments have been deposited by at least five contracting States, to which end, ICAO will notify such date to each of the respective governments.
2. For any State that deposits the ratification instrument after the effective date of this Agreement, the effective date will be sixty days as of the date in which such ratification instrument is deposited.

Article 22 - Accession

- 1- States that are not signatories to the Agreement but belong to the ICAO South American Region may adhere to the Agreement after it has entered into effect by submitting the instrument of accession to ICAO.
- 2- Before accession by a State, the unanimous approval by Contracting States and an agreement between such State and the Organisation will be required in order to address technical, operational, financial, and administrative matters to enable its accession.
- 3- ICAO shall notify the governments of the signatory and contracting States of any accession instrument that has been deposited.
- 4- Accession will come into effect within sixty days after the respective instrument has been deposited.

Article 23 - Observers

The participation of observers at the meetings of the Organisation will require the unanimous approval by all participating States or that are entitled to be a party thereof.

Article 24- Amendments or Modifications

1. Any participating State may propose amendments or modifications to this Agreement, which will be submitted to the consideration of the Executive Council and approved by two-thirds of the Contracting Parties.
2. Nevertheless, the unanimous approval by the Contracting States will be required for amending or modifying Articles 1, 3, 22 and 23.

Article 25 - Denouncement

- 1- Any participating State may denounce this Agreement after two years of the effective date for that State, by submitting a notification to ICAO, which will then be communicated to the other States. The denouncement of the Agreement will take effect one year after the notification to ICAO.
- 2- The denouncement does not release the State from its financial responsibilities and commitments that are outstanding by the effective date of the denouncement.

Article 26 - Duration and Termination

This Agreement will have an indefinite duration, and will be terminated when the Executive Council unanimously decides to dissolve the Organisation, which will continue to exist until its definite liquidation. The Parties shall agree on the distribution and transfer of the goods and the continuation of service provision.

Argentina -----

Bolivia -----

Brazil -----

Chile -----

Ecuador -----

Paraguay -----

Peru -----

Uruguay -----

APPENDIX C**ATTACHMENT 7 TO THE REPORT OF THE 79TH MEETING OF THE LACAC EXECUTIVE COMMITTEE** (Mexico City, 31 August to 1 September 2010)**Report of the analysis of the Agreement for the Establishment of the South American Air Navigation and Safety Organisation 2010**

(Presented by Chile)

Summary

This working paper presents the comments made by the LACAC Legal Panel with respect to the Agreement for the establishment of the South American Air Navigation and Safety Organisation, with a view to the integration of the SRVSOP into that organisation.

References

1. ICAO-LACAC Memorandum of Understanding for the establishment of the SRVSOP.
2. Agreement for the establishment of the South American Air Navigation and Safety Organisation.
3. Report of the 21st Ordinary Meeting of the SRVSOP General Board (Santiago, 22 March 2010).
4. Report of the 25th Panel Meeting (GEPEJTA/25, Buenos Aires, Argentina, August 2010).

Background

1. Pursuant to the decision of the Safety Oversight Cooperation System Board, Chile, as the Safety Focal Point, presented a working paper at the 14th meeting of GEPEJTA (Lima, Peru, 27-29 April 2010) on the process for the institutionalisation of the Regional Safety Oversight Cooperation System (SRVSOP), and requested GEPEJTA to analyse the way in which the Regional System could be integrated into the future South American Air Navigation and Safety Organisation (RMO), taking into account the Diplomatic Conference held in December 2009 to approve the Agreement for the establishment of such Organisation.

2. After reviewing the working paper, GEPEJTA agreed to establish an *ad-hoc* group made up by Argentina, Brazil, Costa Rica, Paraguay, Peru, Uruguay and Chile, as speaker, to perform the work requested.

3. Following an extensive debate, the *ad-hoc* group considered that, in order to fulfil the task requested, an overall analysis of the Agreement for the establishment of the RMO was required, given the fact that it contained a number of items that needed to be reviewed in a coordinated manner.

Discussion

4. Upon analysing the articles of the Agreement, it may be concluded that it presents a number of issues that prevent the integration of the SRVSOP into the RMO, and whereby the States that currently are members of the System and do not belong to the South American Region can participate with the same privileges, rights and obligations.

5. The Group considers that, regardless of whether or not the system is integrated with the RMO, the Agreement contains some articles that might hinder its entry into effect. However, this opinion is beyond the terms of reference assigned to the group, especially considering that not all the background information concerning air navigation services was available. However, in view of some well-founded doubts, it was deemed advisable to include it in the report so that the RMO could be finally ratified.

6. The main comments concerning the articles of the Agreement referred to the integration of the SRVSOP into the RMO are shown below:

- Regarding the geographical scope, it should be noted that it is limited to the “South American (SAM) Region of the International Civil Aviation Organization (ICAO).” This is a limitation for those member States of the Regional Safety Oversight Cooperation System that do not belong to this Region.
- This limitation appears throughout the Agreement: in Article 1, Scope; Article 20, Signing and ratification, and Article 22, on accession. Thus, the *ad-hoc* group considers that if the scope is not extended to the LATIN AMERICAN region, not all the States that currently belong to the two systems (Air Navigation and SRVSOP) will be able to participate.
- Likewise, the Agreement considers safety matters only as related to safety oversight, and specifically concerning to air traffic services. That is, it does not consider the other critical safety elements, like, for instance, regulation, certification, training, organisational structure, amongst others, which are priority tasks for the SRVSOP.
- Consequently, the panel considered that, in order for the SRVSOP to be able to perform all its functions, the provisions on this topic would need to be modified, extending the application to the overall safety concept.
- Similarly, the group took note of those provisions of the Agreement that called for “unanimous approval”, such as the approval of a State’s accession to the Agreement (art.22); the presence of observers (art.23); and amendments or modifications to the Agreement (art.24); they even allow States that are not party to the Agreement to impede the participation of observers, a solution that does not exist in any other international instruments as far as the experts know and which is obviously contrary to any norm or principle of the law of treaties.
- The unanimous decision solution was abandoned by international organisations many years ago, amongst other reasons because it grants to each party the right to veto. From a practical point of view, the experience of the Society of Nations, amongst others, where the principle of unanimous vote prevailed, was characterised by its unworkability, something that the experts would not like to see repeated in the organisation to be created. However, this decision has to do with the way in which the States want to operate, but its advantages and disadvantages must be taken into account.

- Another relevant topic relates to articles 16, 17 and 18 of the Agreement, which deal with immunities, privileges and exemptions, which should be the subject of another agreement between the host State and each participating State.
- Furthermore, it was felt that the powers of the Steering Council and the Executive Director might be insufficient for a comprehensive management.
- The Group also felt that other articles of the Agreement were not very clear, and that this could affect the legal and technical meaning of the provisions.
- Finally, the Group submitted an attachment containing a preliminary proposal for the incorporation of the SRVSOP into the RMO, which required further analysis. This attachment was intended as a contribution in the area of air navigation services to the existing Agreement drafted by GREPECAS. Consequently, this attachment has only value in case it is decided to create one single RMO to meet the needs of multinational services in both air navigation and safety areas, in a broad sense.
- It should also be noted that the panel took into account the position of Argentina, in the sense that the participation in the RMO of States from outside the Latin American Region that had a territorial dispute, recognised by the United Nations, was not acceptable.

Proposal

7. Amongst the possible solutions for the institutionalisation of the SRVSOP as an RMO, the following might be considered:

- To review the attachment submitted by the Legal Panel for improving the Articles of the Agreement and thus being able to integrate the SRVSOP into the RMO. However, this implies convening a new Diplomatic Conference.
- To conduct studies for the creation of a new RMO that would take over the functions and objectives of the SRVSOP. This option would imply having two RMOs: one for air navigation services and the other for safety. It should be noted that this alternative would probably imply higher costs and that the synergies of a single RMO would be lost, and would also require convening a Diplomatic Conference for the creation of the Safety RMO.
- If the decision is made to create two RMOs, and considering that this option might be beyond LACAC duties, the authorities should be made aware of the concerns of the Panel that might affect the ratification of the Agreement with respect to air navigation services. Thus the need to create a working group within the framework of GREPECAS or wherever it may be deemed appropriate, to clarify existing doubts.

Measures proposed to the Executive Committee

8. The Executive Committee is invited to take note of the information presented in this working paper and to exchange opinions on the steps to be taken to define the future institutionalisation of the SRVSOP.