



1.5. The meeting felt that the new text was mature enough for its submission to the Eleventh Meeting of Civil Aviation Authorities (RAAC /11) and formulated the following conclusion:

**CONCLUSION EANAI 1/1                    DRAFT CONSTITUENT AGREEMENT FOR THE ESTABLISHMENT, OPERATION, AND MANAGEMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)**

That the Eleventh Meeting of Civil Aviation Authorities (RAAC/11) review, approve and recommend to the SAM States the draft incorporation agreement for the establishment, operation, and management of a regional multinational organisation (RMO), prepared on the basis of the guidance material developed by GREPECAS (Con. 14/5), and with the corrections that this meeting may deem appropriate, with a view to the establishment of an institutional agreement for the implementation of a regional multinational organisation (RMO) in the Region.

1.6. The EANAI/ 1 meeting decided that this draft should be sent to all SAM States for their review and comments, which would be subsequently discussed at second meeting of the High-Level Panel on Institutional Aspects (EANAI/2).

1.7. Upon completing the revision of the Constituent Agreement, the EANAI/2 meeting formulated the following conclusion concerning the delivery of Appendix A for analysis by the RAAC/11 meeting:

**CONCLUSION EANAI 2/1                    REVIEW BY THE RAAC/11 MEETING OF THE DRAFT CONSTITUENT AGREEMENT FOR THE ESTABLISHMENT, OPERATION, AND MANAGEMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)**

That the RAAC/11 meeting:

- a) Review the draft Incorporation Agreement for the establishment, operation, and organisation of a Regional Multinational Organisation (RMO), which appears in Appendix A to this part of the report, amend it as necessary, approve it as a legal/institutional instrument to be applied by the States concerned of the ICAO SAM Region for the implementation of an RMO; and
- b) Accordingly, request ICAO to coordinate the holding of a Diplomatic Conference in the Region, with the only purpose of analysing in detail the draft Incorporation Agreement, and drafting and approving its definitive text, for the establishment of the Regional Multinational Organisation.

1.8. The Eleventh Meeting of Civil Aviation Authorities, held in Santiago, Chile, on 6-8 May 2009, formulated the following conclusion concerning the institutional aspects for the management and control of multinational facilities:

**CONCLUSION RAAC 11/3                    DIPLOMATIC CONFERENCE FOR DRAFTING THE DEFINITIVE TEXT OF THE INCORPORATION AGREEMENT FOR THE ESTABLISHMENT, OPERATION AND MANAGEMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)**

That, ICAO, in coordination with the States of the Region, organise a Diplomatic Conference on the second semester of 2009, which, taking into account the draft Incorporation Agreement for the establishment, operation and management of a Regional Multinational Organisation (RMO) contained in Appendix A to this part of the Report, draft and approve the definitive text of said agreement for the establishment of the Regional Multinational Organisation.

2. **Analysis**

2.1 Based on the report of the RAAC/11 meeting and the review of the Draft Agreement, Chile presents in **Appendix A** some suggestions to be taken into account for said Draft Agreement.

3. **Suggested Action**

3.1 The Meeting is invited to:

- a) take note of the information provided in this working paper and its Appendix A.
- b) exchange points of view regarding the text presented.

- END -

## APPENDIX A

### SUGGESTIONS TO BE TAKEN INTO ACCOUNT FOR THE DRAFT AGREEMENT

Regarding the text approved by the Eleventh Meeting of Civil Aviation Authorities, the following provisions are proposed:

1. In Article 2, the following wording is suggested:

“Article 2 – Legal Nature: The Organisation will have international legal status in each Contracting State, may exercise rights and incur obligations, and will enjoy such managerial and financial autonomy as may be appropriate for contracting for, acquiring, and disposing of the goods and services of the Organisation, as well as for undertaking legal action, appearing in court, and being represented extra-judicially.”

The purpose of this is to clearly establish the legal status of the organisation, so that it may be recognised in each of the Participating States.

2. In Article 3, the following wording is proposed:

“Article 3 – Purpose: The purpose of the Organisation is to provide and manage, in accordance with the rules to be established in the respective by-laws, the multinational facilities envisaged in the CAR/SAM Regional Air Navigation Plan, within the territory of the Contracting Parties and in all spheres of responsibility set forth in the Regional Air Navigation Agreements and in agreements with other States/Organisations as may be reached by virtue of a bilateral or multilateral arrangement with the Organisation. Furthermore, the Organisation may provide assistance on other matters for the effective fulfilment of responsibilities by the Contracting Parties.

The Organisation may also provide other services not envisaged in the CAR/SAM Regional Air Navigation Plan, in keeping with that established in the respective by-laws and through bilateral or multilateral agreements.”

Likewise, a new article is proposed, with the following wording:

-Budget: The Regional Multinational Organisation will be financed through a) mandatory contributions by the Participating States, b) voluntary contributions, c) other sources.

State contributions will be used for covering administrative expenditures and for financing the services to be provided by the RMO.

The Organisation operates under a cost-recovery scheme, and thus is a non-profit organisation.”

3. In Article 6, the Constituent Agreement should specify where the headquarters of the Organisation would be located in order to have legal assurance in that regard.

4. In Article 8, which refers to the Executive Council, it is proposed that this Constituent Agreement establish the tenure of the President of the Council, leaving it to the consideration of the Diplomatic Conference.

5. In item b) of Article 9, on the rates and fees to be paid by the users of the services to be provided by the Organisation, it is suggested that a final sentence be added: “The rates and fees to be charged by the Organisation to each Contracting State may be transferred to third parties in accordance with the internal legislation of each Contracting State.”

6. In Article 10, concerning the Executive Director, the following wording is proposed: “The Executive Director may have the nationality of any of the Parties and will be elected by majority of the Executive Council. The Executive Director will be in office for four years, with the possibility of being re-elected only once, for the same period of time.”

7. In Article 12, on decision-making methods, the following drafting is proposed for paragraph 2: “The meetings of the Executive Council will require a *quorum* of two thirds of its members.”

8. Likewise, Article 13, on Personnel, must clearly stipulate which member of the staff will represent the Organisation in the application of immunities and privileges. Furthermore, a new article is proposed, listing the privileges of the officials of the Organisation.

9. In Article 16, the following text is proposed, which corresponds to the privileges granted to ICAO by virtue of section 9 of the 1947 United Nations Convention on the Privileges and Immunities of the Specialized Agencies.

–“Tax and customs exemptions: The Organisation, its assets, income, and other property will be exempt, in the territory of the Participating States:

- a) from any direct taxes, except those that constitute payment for services of public utility;
- b) from customs duties and prohibitions and restrictions to imports and exports in respect of articles imported or exported by the Organisation for its official use; it is understood, however, that articles imported under such exemption will not be sold in the country into which they were imported.
- c) from customs duties and prohibitions and restrictions on imports and exports in respect of its publications.

The privileges set forth in this Article by no means extend to those matters related to air navigation services or assistance provided by the Organisation to secure its own resources, as agreed upon through contract or bilateral or multilateral agreement.”

10. In Article 17, the following drafting is proposed, based on the immunities and privileges granted to ICAO by virtue of sections 4 to 8 of the United Nations 1947 Convention on the Privileges and Immunities of the Specialized Agencies:

- “Privileges and immunities:

- a) The Organisation, its property and assets, wherever located and by whomever held, will have immunity against any jurisdiction, unless expressly waived. However, it is understood that no immunity waiver will extend to a legal measure of execution.
- b) The premises of the Organisation are inviolable. The property and assets of the Organisation, wherever located and by whomever held, will be exempt from search, inspection, confiscation, and any other form of interference, be it through executive, administrative, judicial, or legislative action.
- c) The files of the Organisation and, in general, all the documents that belong to it or are in its possession, will be inviolable, wherever located.

d) Not being subject to any control, regulation, or moratorium, the Organisation can hold funds or foreign currency of any kind, and operate accounts in any currency. Likewise, it may freely transfer its funds and foreign currency from one country to another, and from one place to another within any country, and convert the foreign currency it holds into any other currency.

e) By virtue of the rights granted in the previous paragraph, the Organisation will pay due regard to any representations by the government of any State party to this Agreement, insofar it is considered that effect can be given to said representations without detriment to its own interests.”

The privileges stipulated in this Article by no means extend to those matters related to air navigation services and assistance provided by the Organisation to secure its own resources, as agreed upon through contract or bilateral or multilateral agreement.”

11. In Article 19 – Dispute Settlement, the following text is proposed:

“Any disagreement as may arise over the interpretation of application of this agreement will be resolved by the Parties through direct consultation. If the dispute is not resolved through such consultations within three months after they have been started, any of the Parties may, through written request, submit it to the decision of the Executive Council, unless the parties agree to submit the problem to arbitration.

If the Parties decide to resort to arbitration, each Party will appoint an arbitrator, and the two arbitrators thus appointed will designate a third arbitrator, who will act as President. The tribunal will set its own procedure, and its decision shall be binding for the Parties. ”

The Executive Council will take the appropriate measures to solve the disputes originated by the services or the assistance agreed upon in the contracts or bilateral or multilateral agreements, or other private law disputes in which the Organisation is involved.”

12. In Article 20- Signing and ratification, the following drafting is proposed:

“This Agreement is to be signed and ratified by each of the Contracting Parties, and the respective ratification instrument will be deposited with ICAO.

The Agreement may be signed by any other State from the ICAO South American Region before its effective date, as stipulated in Article 21 of this Agreement.

ICAO will notify the governments of the other signatory States of the Agreement, about any State signing the Agreement or depositing a ratification or accession instrument.”

13. In Article 24, on Amendments and Modifications, the following wording is proposed:

“Any of the Contracting Parties 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.

The amendments or modifications thus approved will become effective once ratified by two thirds of the Contracting Parties, and will be binding as of that date for the Parties that have deposited their ratification or accession instrument.

For those Parties that communicate their ratification or accession to the amendments after their effective date, they will enter into force 30 days after they have deposited the respective instrument.