



International Civil Aviation Organization

Diplomatic Conference for the drafting and adoption of the definitive text of the Constituent Agreement for the Implementation of a Regional Multinational Organisation (RMO) in the ICAO SAM Region

Brasilia, Brazil, 7 - 9 December 2009

Agenda Item 8: Discussion of the draft Constituent Agreement

**DRAFT CONSTITUENT AGREEMENT FOR THE IMPLEMENTATION OF A
MULTINATIONAL REGIONAL ORGANIZATION (MRO)**

(Presented by Uruguay)

SUMMARY

This Working Paper presents the proposal of Uruguay for modification of the Draft Constituent Agreement for the implementation of a Multinational Regional Organization (MRO)

1. Suggested action

The Delegation of Uruguay submits to the consideration of the other Delegations of the Diplomatic Conference the proposal being presented as **Appendix A** to this Working Paper.

- END -

APPENDIX A

PROPOSAL BY URUGUAY

The term “Agreement” is reserved, in general, to bilateral treaties between States. The term “Convention” is proposed. And then, it should say: “on a Regional Organisation”. The term “multinational” is usually used to refer to a corporation that has branches established in different States. Furthermore, the title Convention must not contain a description of the mission of the future organisation, but rather only refer to its purpose.

Accordingly, the proposal is: “*Draft Convention on communication, navigation, surveillance, and air traffic management services*”.

The establishment of an organisation responsible for the provision of such services will arise from the text of the Convention, just as the 1944 Chicago Convention that created ICAO makes no reference to it in its title.

The proposed instrument.

Regarding the title, the respective comments have already been made.

It should start with the following phrase, or something similar:

“The signatory States:”

First Whereas: “...no aspect inherent to the (CNS/ATM) systems is incompatible with the Chicago Convention of 1944.”

Comment: The negative construction does not seem to be the most appropriate. The purpose of this type of construction, in general, is, for instance, to clearly state the exceptional nature of the acknowledgment of a right, which shall be interpreted as extremely restrictive. An affirmative wording is suggested:

“Whereas *the systems... as a whole, are compatible with the provisions and spirit of the 1944 Chicago Convention on International Civil Aviation, as acknowledged in Resolutions A 32-19, etc.”*

Compatibility does not emanate from the Assembly Resolutions, but from the study of the Convention and its Annexes. Resolutions only confirm or recognise it.

Second Whereas: “...the States maintain authority etc. ...”

Comment: This seems the confirmation of a fact, when it should specify a principle. The following is suggested: **“Asserting:** *that the States shall retain, at all times and under all circumstances, their authority and responsibility with respect to air navigation control and compliance with safety oversight standards in their airspace (Art. 28 of the 1944 Chicago Convention).”*

Third Whereas: “... Resolutions A32-19, etc. “

Comment: The following drafting is suggested: **“Echoing the appeal to cooperation and mutual assistance among States contained in Resolutions A32-19, A32-15, and A35-15 of the ICAO Assembly, with a view to achieving greater uniformity in the provision of communication, navigation, surveillance, and air traffic management services.”**

Fourth Whereas: "...regional initiatives...etc.... are all important."

Comment: The following wording is suggested: "Appreciating regional initiatives concerning the development and planning of air navigation principles and techniques, the improvement of safety for the prevention and reduction of the consequences of operational failures in communication, surveillance, and air traffic management systems, and the fulfilment of obligations and responsibilities."

Fifth Whereas: "...regional cooperation is effective..."

Comment: Mention has already been made to the benefits of regional cooperation. It seems advisable to focus on the appropriate means. The word "global" in English means "*mundial*" in Spanish. Safety has already been mentioned and, whatever its importance, is not the purpose of the Convention. The following drafting is suggested:

"Recognising the need to implement regional communication, navigation, surveillance, and air traffic management systems in order to contribute to global air traffic management through the implementation of ICAO standards, recommended practices, and guidance, especially those contained in Resolutions A35-3 and A35-7 of the ICAO Assembly.

Sixth Whereas: "... ICAO Assembly Resolution A 35-7 encourages States etc.

Comment: This has already been said in other words. Resolution A35-7 has already been cited. But if the idea is to maintain this whereas, the following wording is suggested: *Inspired by the appeal made in ICAO Assembly Resolution A35-7 for the States to cooperate in the development of solutions to common problems in order to strengthen their individual safety oversight capability.*

Seventh Whereas: "...it is necessary to establish international agreements at the regional level ... etc."

Comment: This whereas should be deleted. That is what it is all about: to sign a Convention.

Eighth Whereas: "... the CNS/ATM systems are global/regional in nature etc."

Comment: Regional was previously referred to as contrary to global, which would be the ultimate goal of the system. The eighth whereas is a rationale that seeks to convince the States to sign, ratify or adhere to the Convention. It is not appropriate for a Preamble. The suggestion is to delete it.

Ninth Whereas: "...cost sharing among users must be reasonable ... etc."

Comment: It is not considered advisable to use the word "reasonable", because it does not indicate how costs will be shared. The term "equitable" or a term derived from it seems more appropriate, since equity is the manifestation of justice. The following drafting is proposed:

"Aware of the need to establish an equitable system for sharing, assigning, and recovering the costs generated from the provision of services among the users in keeping with Art. 15 of the 1944 Chicago Convention."

Tenth Whereas: "... an appropriate legal framework is required ... etc."

Comment: It should read: "... an appropriate legal framework is required ... etc." And then: ... in order to achieve..." (instead of "in order to achieve"). (N.B. changes are only applicable in Spanish.)

Eleventh Whereas: "...the CAR/SAM Regional Planning ... etc."

Comment: The following wording is proposed:

"Taking into account... advising the establishment of a Regional International Organisation (RIO)."

"It is resolved to adopt the following:"

Comment: "*Have agreed to the following:*"

**CONSTITUENT AGREEMENT ON A REGIONAL INTERNATIONAL
ORGANISATION
OR EVEN BETTER:
CONSTITUENT AGREEMENT ON A REGIONAL ORGANISATION**

Article 1 – Scope

Comment: Do not use acronyms or figures, since there has been no chapter on definitions. Instead: "South American (SAM) Region of the International Civil Aviation Organization (ICAO)." From there on, acronyms or figures can be used. Do not use slashes.

Article 2 – Legal Nature

The Organisation will have internal and international legal status for all purposes required for the attainment of its goals and objectives. (Channelling theory.)

Article 3 – Purpose

The purpose of the Organisation will be to manage facilities and provide the international services envisaged in the Caribbean and South American (CAR-SAM) Regional Air Navigation Plan, as well as any other emanating from its by-laws, through contracts or bilateral or multilateral agreements. (This raises a question: is it only the SAM Region, or CAR/SAM?) (The descriptive text should be deleted.)

Article 4 – Duties and responsibilities

- i) Request from, and communicate to, the competent national authorities all relevant information.

Article 7 – Structure

The text starting: "The structure of the executive body shall be ... etc." should be deleted up to "representation". The Executive Director is the only one who represents the organisation. The administrative and technical aspects must be the responsibility of the administrative and technical officials, who, upon having no representation, have no power of initiative but only the continuity of the tasks assigned.

Article 8 – Executive Council

"The Executive Council will be made up by a representative of each participating State and an alternate".

It will have a President and a Vice-President etc. (who will be in office for three years, and may be re-elected only once).

Article 10 – Executive Director

To be deleted

Article 16

This article should deal with privileges and immunities.

Article 17 should deal with exemptions, and without mixing capacity.

An article 18, on facilities.

As to immunities and privileges, they should refer to those normally recognised to international organisations, or, else, make reference to them in detail, taking into account, for instance, the Organization of American States (OAS).

Article 19 – Dispute settlement

It should list the various dispute settlement means mentioned in the Charter of the United Nations: negotiation, investigation, good offices, mediation, arbitration, jurisdictional procedure. I do not think it is advisable for the Executive Council to have jurisdictional functions.

Article 20 – Signing, ratification, and accession

No mention is made of accession. Those who sign are the ones who negotiated. They can ratify it afterwards. The other States of the Region may accede to it, meeting the conditions set forth in Art. 21, which should be eliminated.

Article 26 – Denouncement

It seems too demanding.