



International
Civil Aviation
Organization

Organisation
de l'aviation civile
internationale

Organización
de Aviación Civil
Internacional

Международная
организация
гражданской
авиации

منظمة الطيران
المدني الدولي

国际民用
航空组织

LG 4/4 – SA712

6 October 2009

To: Mr. Pierre du Bois/DIRAC, French Guiana
Mr. Zulficar Mahomed /CAD a.i., Guyana
Mr. John Veira/CAD, Suriname
Mr. Peter Cerda, IATA LATAM/CAR
Ms. Carole Couchman, IFALPA

cc.: Mr. Philippe Guivarch/DSNA, French Guiana
ICAORD Mexico

Subject: **Diplomatic Conference for the drafting and adoption of the definitive text of the Constituent Agreement for the Implementation of a Regional Multinational Organisation in the ICAO SAM Region**
(Brasilia, Brazil, 7 - 9 December 2009)

Required

action: Indicate whether your State will participate, and, if so, what will be the composition of the delegation

Dear Sir/Madam,

I have the honour to address you in reference to my letters SA375 and SA594 of 10 June and 26 August 2009, respectively, in which, in keeping with the results of the Eleventh Meeting of Civil Aviation Authorities (RAAC/11), I invited you to submit proposals for hosting the Diplomatic Conference under reference, and informed you that the Government of Brazil had accepted the invitation to host the conference.

For your information, the report of the RAAC/11 meeting, which documented the agreement reached by the Civil Aviation Authorities of the Region to hold a Diplomatic Conference, is posted on the webpage of the ICAO SAM Regional Office at www.lima.icao.int in the section Meetings. As you may note, this agreement is contained in RAAC/11 Conclusion 11/3. This agreement was reached on the basis of the work carried out by the CAR/SAM Regional Planning and Implementation Group (GREPECAS), which, at its fourteenth meeting, completed its studies on the most suitable institutional arrangement for the management, consolidation, and implementation of multinational facilities with a view to facilitating

regional/global implementation of Air Traffic Management (ATM). Accordingly, Conclusions 14/5 and 14/6 were formulated. These GREPECAS conclusions were analysed in detail at the two meetings of the High-Level Panel on Institutional Aspects (EANAI), established by the Meetings of Civil Aviation Authorities of the SAM Region. The result of this analysis was presented at the RAAC/11 meeting. For our reference, the main recommendations of both the GREPECAS mechanism and the RAAC meetings are shown in **Appendix A**.

The purpose of this letter is to invite your State to participate at the Diplomatic Conference under reference, to be held at the Itamaraty Palace, in Brasilia, Brazil, on 7-9 December 2009. The conference will be held in Spanish and English, and the final texts of the Constituent Agreement are prepared in the two languages. ICAO decided to invite all the States of the SAM Region, and, as observers, the States of the CAR Region interested in the Conference, as well as International Organisations such as IATA, IFALPA, ALTA, IFATCA, COCESNA and LACAC.

Credentials and Full Powers

The Conference will establish a Credentials Committee. According to the internal regulations of the Conference and the established international practices, the Head of State or Government, or the Minister of Foreign Affairs will extend the **credentials**. Likewise, those delegations that wish to sign the instrument to be adopted by the Conference shall present **full powers**, signed by the Head of State or Government, or by the Minister of Foreign Affairs. Credentials and full powers may be combined in a single instrument, but credentials alone are not enough for signing the instrument(s) approved by the Conference. In order to facilitate the drafting of the letter of credentials and full powers, **Appendix B** contains a model of such letter. Only the original of this instrument will be accepted.

Documentation

Appendix C contains the provisional agenda for the Conference. Subsequently, I will send you Information Paper 1 (IP/1) containing administrative and general information concerning the Conference.

The basic work document of the Conference is the draft Constituent Agreement for the Implementation of a Regional Multinational Organisation, as revised by the RAAC/11 meeting, which appears in **Appendix D**.

The provisional Internal Regulations of the Conference will be circulated shortly.

Working papers and other documentation will be posted on the website of the ICAO SAM Regional Office, in the section on Meetings, as they become available.

Registration and other arrangements

All participants, including observers, shall register upon arrival at the venue, in the schedule indicated in the aforementioned IP/1. Upon registration, each participant or observer will receive an identification that will be required to enter the site of the Conference.

Processing

I will appreciate it that any comments on the draft Constituent Agreement be sent to me no later than **9 November 2009**, together with any other documentation. The electronic format used for documents will be Microsoft Word. Documents received after **20 December 2009** will not be translated and will be published only in their original language.

Considering that the intention is to complete the administrative arrangements for the Diplomatic Conference as soon as possible, I would appreciate it very much if you could tell me if your Government or Organisation will participate in the Conference and, if so, who will be part of your delegation.

Accept, Sir/Madam, the assurances of my highest consideration.



Franklin Hoyer
Regional Director
South American Office
Lima

Encs.

APPENDIX A

GREPECAS RELEVANT CONCLUSIONS

CONCLUSION 14/5 GENERIC DOCUMENT CONCERNING AN AGREEMENT FOR THE ESTABLISHMENT OF A REGIONAL MULTINATIONAL ORGANIZATION

Whereas the most effective way to implement/consolidate multinational facilities, and manage and provide services is through the implementation of a Regional Multinational Organization (RMO), and that this requires a basic reference document to serve as basis for the States/Territories concerned to conduct the necessary studies:

- a) it is recommended that the States/Territories that are interested in implementing an RMO use the summarised draft Agreement for the establishment of a Regional Multinational Organization (RMO) shown in the attached **Appendix A**, the draft Agreement for the Establishment, Operation, and Management of an RMO, shown in **Appendix B**, and the corresponding draft by-laws shown in **Appendix C** to this part of the Report; and
- b) the ICAO NACC and SAM Regional Offices are requested to follow-up on action taken by the States with respect to the implementation of an RMO, as appropriate.

CONCLUSION 14/6 TECHNICAL COOPERATION PROJECT TO FACILITATE THE IMPLEMENTATION OF A REGIONAL MULTINATIONAL ORGANIZATION (RMO)

Based on GREPECAS guidelines for the implementation of multinational facilities, the States interested in implementing RMOs should consider, in coordination with ICAO, the formulation of a technical cooperation project that includes an agreement for its establishment, operation, and management, taking into account the possible objectives contained in Appendix D to this part of the Report.

CIVIL AVIATION AUTHORITIES MEETINGS (RAACs) RELEVANT CONCLUSIONS

**CONCLUSION 6/9 MECHANISM FOR DETERMINING THE
FEASIBILITY OF CNS/ATM IMPLEMENTATION**

That the Regional Director of ICAO, in co-ordination with the States of the South American Region:

- a) prepare the Terms of Reference and Work Programme for the establishment of a Regional Group of high-level experts to study the feasibility of CNS/ATM implementation; and
- b) call upon the Regional Group referred to in the previous paragraph, once the work provided for in the conclusions contained in paragraph 2.32 above has been completed.

CONCLUSION 7/5 HIGH LEVEL REGIONAL GROUP OF EXPERTS.

That:

- a) The terms of reference and work program for the high level regional Group of experts to study the viability of the implementation of the CNS/ATM systems, that are referred in Conclusion 6/9 of the RAAC/6 Meeting are the ones indicated in the Appendix B; and
- b) The ICAO Regional Office coordinate with the States the first meeting of the Group, once GREPECAS produces the corresponding studies about the multinational installations/services.

**CONCLUSION 11/3 DIPLOMATIC CONFERENCE FOR DRAFTING THE
DEFINITIVE TEXT OF THE CONSTITUENT
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 Constituent 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.

CONCLUSION 11/4

STATE PROPOSALS FOR DETERMINING THE HEADQUARTERS OF THE REGIONAL MULTINATIONAL ORGANISATION (RMO)

The Meeting:

- a) approved the minimum conditions for the establishment of the headquarters of the Regional Multinational Organisation (RMO), shown in Appendix B to this part of the Report; and
- b) requested ICAO to circulate said Appendix to SAM States, inviting them to submit their proposals on RMO headquarters.

CONCLUSION 11/5

TECHNICAL ASSISTANCE FOR THE IMPLEMENTATION OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)

That, in order to establish the technical assistance for the implementation of a Regional Multinational Organisation (RMO), ICAO circulate the Technical Cooperation Project Document shown in Appendix C to this part of the Report for approval by the States.

APPENDIX B

LETTER OF CREDENTIALS AND FULL POWERS (MODEL)

It is an honour for me to address the Secretary General of the International Civil Aviation Organization to inform you that the following officials have been duly accredited to represent..... (name of State) at the Diplomatic Conference to be held in Brasilia, Itamaraty Palace, Brazil, from 7 to 9 December 2009 for the adoption of the definitive text of the Constituent Agreement for the Implementation of a Regional Multinational Organisation in the ICAO SAM Region.

(Name of the officials and their respective authority as Head of Delegation, Alternate Head of Delegation, Delegate, Alternate, or Advisor)

I also authorise.....(name of the authorised officials) to sign, with full powers and on behalf of the government of..... (name of State), the international instrument(s) that the Conference may adopt.

Signed in..... (place in which it was signed), on(day, month, year).

Signed by:
(Head of State, or
Head of Government, or
Minister of Foreign Affairs)

APPENDIX C

DIPLOMATIC CONFERENCE FOR THE IMPLEMENTATION OF A REGIONAL MULTINATIONAL ORGANISATION IN THE ICAO SAM REGION

(Brasilia, Brazil, from 7 to 9 December 2009)

PROVISIONAL AGENDA

1. Opening of the Conference
2. Election of the President and Vice-Presidents of the Conference
3. Adoption of the Agenda and Internal Regulations
4. Establishment of the Credentials Committee
5. Organisation of work
 - a) Procedure for analysing the Constituent Agreement for the Implementation of the Regional Multinational Organisation (RMO); and
 - b) Designation of the Plenary Committee and other Committees that may be necessary
6. Election of the president of the Plenary Committee
7. Report by the Credentials Committee
8. Discussion of the draft Constituent Agreement
9. Adoption of the definitive text of the Constituent Agreement or other recommendations/resolutions.
10. Signing of the Constituent Agreement

APPENDIX D

CONSTITUENT AGREEMENT FOR THE ESTABLISHMENT, OPERATION AND MANAGEMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)

Whereas no aspect inherent to the communications, navigation and surveillance/air traffic management (CNS/ATM) systems is incompatible with the Convention on International Civil Aviation (Chicago, 1944) or with its standards and recommended practices and, as a result, there are no legal obstacles to prevent their establishment and operation, as reflected in Resolutions A32-19, A32-20 and A35-3 of the International Civil Aviation Organization (ICAO) Assembly.

Whereas, in keeping with Article 28 of the Convention on International Civil Aviation (Chicago, 1944), States maintain authority and responsibility over air navigation control and the fulfilment of safety oversight standards within their sovereign airspace.

Whereas ICAO Assembly Resolutions A32-19, A32-20, and A-35-15 on the subject call for cooperation and mutual assistance among States to achieve the maximum degree of uniformity possible in the provision of CNS/ATM services.

Whereas regional initiatives for the development and planning of international air navigation principles and techniques, the enhancement of safety within the sphere of international civil aviation in order to prevent and reduce the negative consequences of operational failures of the CNS/ATM systems, and effective compliance of responsibilities for safety oversight, are all important.

Whereas regional cooperation is effective for putting into practice and consolidating the organisation and implementation of CNS/ATM systems, with a view towards global ATM and the safety system, taking into account for that purpose ICAO standards, recommendations, and guidance and, particularly, ICAO Assembly Resolutions A35-3 and A35-7.

Whereas ICAO Assembly Resolution A35-7 encourages States to promote the creation of regional or subregional associations to collaborate in developing solutions to common problems, in order to strengthen their individual capacities for safety oversight.

Whereas it is necessary to establish international agreements at the regional level to facilitate the establishment, operation and management of communications, navigation, and surveillance/air traffic management (CNS/ATM) and safety systems in the SAM and/or CAR Regions.

Whereas the CNS/ATM systems are global/regional in nature and the investments needed for their implementation and operation are sizeable, and international regional collaboration is essential for greater efficiency and economy, thereby avoiding the duplication of human and material resources, given the benefits to be gained from the sharing of facilities, services and costs and the possibilities for obtaining common financing and benefits.

Whereas cost sharing among users should be reasonable, their imposition and recovery will be carried out according to Article 15 of the Convention on International Civil Aviation (Chicago, 1944).

Whereas an appropriate legal framework is required to regulate the operation of CNS/ATM systems and cooperation for safety oversight, permitting the access of the largest possible number of States, with a view towards applying the principle of uniformity of international air navigation and safety standards and procedures.

Whereas the meetings of Civil Aviation Authorities (RAACs) of the SAM Region recognised the need to create a regional mechanism to study and decide on the feasibility of implementing CNS/ATM systems (RAAC/6, RAAC/7, RAAC/8, RAAC/9 and RAAC/10).

Whereas the CAR/SAM Regional Planning and Implementation Group (GREPECAS) has completed the task on institutional aspects and has prepared guidance material for the implementation of CNS/ATM systems (Conclusion 14/5) through the establishment of a Regional Multinational Organisation (RMO).

It is resolved to adopt the following:

AGREEMENT FOR THE ESTABLISHMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)

Article 1 – Scope

The ICAO SAM Region Contracting States agree to create in the Region a Regional Multinational Organisation (RMO) for the provision and management of multinational facilities in order to facilitate the implementation of, and, if necessary, implement the ATM operational concept with a view to the global ATM, supported by communication, navigation and surveillance/air traffic management (CNS/ATM) systems, and to give assistance on other matters, in keeping with the standards and recommended practices of the International Civil Aviation Organization (ICAO), which is to be called...and henceforth to be known as ... (in this document, “the Organisation”).

Article 2 – Legal nature

The Organisation shall have a legal status, may exercise its rights and incur obligations, and shall enjoy such management 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, taking part in trials, and being represented extrajudicially.

Article 3 – Purpose

The purpose of the Organisation is to provide and manage the multinational facilities envisaged in the CAR/SAM Regional Air Navigation Plan. It is not a profit-seeking organization since it operates under a cost-recovery scheme, in accordance with what its bylaws will stipulate, within the territory of the Contracting Parties and in all spheres of responsibility set forth in Regional Air Navigation Agreements and agreements with States/Organisations as may be reached by virtue of any bilateral or multilateral arrangement with the Organisation. Furthermore, the Organisation may provide assistance on other matters for the effective compliance 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 what the respective bylaws stipulate and through the signing of bilateral or multilateral contracts or agreements.

Article 4 – Duties and responsibilities

The Organization shall have the following duties and responsibilities:

- a) Exercise rights in regard to the provision, determination, receipt and management of the services listed in the previous article.
- b) Establish an economic policy that will make it possible to achieve financial balance by obtaining its own resources.
- c) Obtain loans in the financial markets that may be guaranteed by the Contracting Parties or others, if necessary.
- d) Propose to the Contracting Parties the standardisation of national regulations and procedures with regard to air navigation services and other matters, in accordance with the standards and recommended practices of the Annexes to the Convention on International Civil Aviation (Chicago, 1944).

e) Carry out the necessary technical, operational and administrative studies and take the corresponding action to fulfil its purpose, taking into account the evolution and development of international civil aviation and compliance with the standards of the Convention on International Civil Aviation (Chicago, 1944).

f) Propose to the Contracting Parties the relevant amendments to the CAR/SAM Regional Air Navigation Plan.

g) Give its personnel appropriate and continuous training.

h) Establish the necessary links with States and International Organisations for the exercise of its duties and responsibilities.

i) Request from and communicate to the competent national authorities all relevant information and report to them any alleged violations of air navigation standards committed within the sphere of its responsibilities.

j) Assess the standardisation of systems within the territory of the Contracting Parties, in keeping with ICAO standards and recommended practices.

k) Study, advise, recommend, facilitate, decide and implement all matters related to the normal and regular activities of the Organisation.

l) Carry out any other activity demanded of it by the Member States that is related to its purpose and within its capability.

Article 5 – Liability and insurance

The Organisation shall, by taking out adequate insurance policies, cover all risks stemming from its liability for damages to third parties resulting from the operation of the facilities.

Article 6 – Headquarters

The Organisation shall have its headquarters in a city of a State Party to be determined according to the advantages offered for its establishment, to which end it shall sign the respective Headquarters Agreement with that State.

Article 7 - Structure

The Organisation shall consist of an Executive Council, an Executive Director and the necessary and appropriate technical, operational and administrative units to fulfil the responsibilities entrusted to it. The structure of the executive body shall be simple, so that it can operate in an agile manner. The tasks to be performed by officials shall cover technical, operational and administrative aspects.

Article 8 – Executive Council

An Executive Council shall administer the Organisation and shall be comprised of one representative of each Contracting Party, who will be replaced by an alternate if unable to attend, both of whom shall be appointed by that Contracting Party and shall be competent in aeronautical matters.

The Executive Council shall have a Chairman and a Vice-Chairman, elected from among the members in rotation and for such terms as the bylaws may stipulate.

Article 9 – Responsibilities of the Executive Council

The Executive Council shall have the following responsibilities:

a) Adopt a common policy for the operation and management of the multinational systems.

b) Set the rates and fees to be paid by users of the services provided by the Organisation.

c) Appoint the Executive Director and the technical, operational and administrative Directors, at the proposal of the Executive Director.

d) Approve the insurance policies stipulated in Article 5, to be taken out with such companies as it may deem appropriate.

e) Approve the annual budget and any reforms to it.

f) Approve the bylaws and internal regulations of the Organisation and/or make amendments or modifications to them.

- g) Approve the amount and terms and conditions of any loans to be obtained in the financial markets for the accomplishment of its objectives.
- h) Consider any proposal of amendments or modifications to this agreement.
- i) Establish the policy for the personnel to be hired.

Article 10 –Executive Director

The Executive Director shall be a national of any of the Contracting Parties and shall occupy that position for such a term as the respective bylaws may stipulate.

Article 11 – Responsibilities of the Executive Director

The Executive Director is the legal representative and executive administrator of the Organisation and shall have the following responsibilities:

- a) Sign the documents for the operation of the Organisation within its sphere of competence.
- b) Present all such reports as required by the Executive Council.
- c) Hire and exercise such personnel management duties as the Organisation may require, in accordance with the policy established by the Executive Council.
- d) Propose to the Executive Council nominees for technical, operational and administrative Directors, with a view to their hiring.
- e) Propose constituent amendments or modifications to the bylaws and internal regulations of the Organisation.
- f) Analyse and propose the rates and fees to be collected by the Organisation.
- g) Prepare the annual budget and advise the Executive Council on the subject.
- h) Perform the duties of Secretary of the Executive Council.
- i) Perform any other such task as may be entrusted by the Executive Council.

Article 12 – Decision-making methods

Each Contracting Party shall have one vote in the Executive Council, to be exercised through its representative.

Executive Council meetings shall require a quorum of two-thirds of the members.

Decisions shall be adopted by majority vote of two-thirds of those present, except in such cases specifically requiring a unanimous vote as may be stipulated in the bylaws and shall be binding on each State or Contracting Party.

Article 13 – Personnel

The Organisation shall hire personnel that are nationals of the Contracting States, except in duly justified exceptional circumstances or situations.

The staff shall have its own labour regime to that end the respective bylaws shall be drawn up and approved, based on those of the United Nations.

Article 14 – Financial system

In accordance with Article 15 of the Convention on International Civil Aviation (Chicago, 1944), the Organisation should try to reach a financial balance.

Article 15 - Audits

The Organisation shall undergo such internal, external, and ICAO audits as the bylaws may stipulate.

Article 16 – Fiscal and customs exemptions

The Organisation, its assets, income, activities and any such contracts as it may sign will be exempt from taxes, duties, charges and/or any other levy, as well as from any restriction or prohibition deriving from the import or export of what is needed for its operation, in a way similar to that contemplated for the United Nations system, within the territory of each of the Contracting Parties.

Article 17 – Privileges and immunities

The Organisation and each of the internal bodies shall, in the territory of each of the Contracting States, enjoy the necessary legal capacity to exercise their responsibilities and such facilities, privileges and immunities necessary to achieve their objectives, which are compatible with their bylaws, international law and the legislation of each State involved.

Its representatives and officials will also enjoy the privileges and immunities associated to their official activities, which are necessary to carry out their responsibilities with independence under this agreement.

All goods and salaries shall enjoy immunity against any legal proceeding, unless such is expressly waived. Even so, such waiver shall not be applied to any legal measure of execution.

Article 18 – Violations

The Organisation shall report to the competent national authorities any alleged violation of air navigation standards committed within the duties and responsibilities provided for in Article 4 and shall send the record accrediting the commission or omission that constitutes the transgression, for the adoption of any such measures as may be appropriate.

Article 19 – Dispute settlement

Any such difference or disagreement as may arise over the interpretation or application of this agreement shall be submitted to the Executive Council for resolution, whose final decision the States Parties agree to accept.

Article 20 – Signing and ratification

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

Before the date of its entry into effect, this agreement shall be open to the signing of any other interested State of the ICAO South American Region.

ICAO shall notify the Governments of the other signatory States to the Agreement about any other signature or deposit of an instrument of ratification of the Agreement.

Article 21 – Entry into effect

This Agreement shall enter into effect sixty days after the deposit of the instruments of ratification of at least ... (the final number shall depend upon the decision made by the Diplomatic Conference) Contracting States, to which end ICAO shall inform each of the respective Governments about that date.

In the case of any State depositing its instrument of ratification after the date of entry into effect of this Agreement, the Agreement shall become effective for that State sixty days after the date of deposit of its instrument of ratification.

Article 22 – Registration

This Agreement shall be registered with the International Civil Aviation Organization (ICAO) as stipulated in Article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Article 23 – Adherence

The States from the ICAO South American Region that are not signatory to this Agreement may adhere to it, once it has entered into effect, by depositing an instrument of adherence with ICAO.

Before a State can adhere to the Agreement, unanimous approval must be obtained from all the Contracting Parties and an agreement signed between that State and the Organization, in order to consider such technical, operational, financial and administrative issues as may permit its incorporation.

The adherence shall become effective within thirty days after the deposit of the respective instrument.

Article 24 – Observers

The participation of Observers at the meetings of the Organization will require the unequivocal unanimous acceptance by the Contracting Parties or by those entitled to be Part of it..

Article 25 – Amendments or modifications

Any one of the Contracting Parties may propose amendments or modifications to this Agreement, which shall be submitted to the Executive Council for consideration and approved unanimously by the Contracting Parties.

Article 26 – Denouncement

Contracting Parties may denounce this Agreement two years after it has become effective for said Contracting Party, by accordingly notifying ICAO, which shall advise the other Contracting States thereof within a period of 30 days.

The denouncement of the Agreement shall become effective one year after the date of the communication by ICAO.

Article 27 – Duration and dissolution

This agreement will have an indefinite duration and will cease to be effective when the Executive Council decides unanimously upon the dissolution of the Organisation, which will continue to exist until its definitive liquidation. The Contracting Parties shall agree on the distribution and transfer of goods and the continued provision of services.

Article 28 – Temporary provision

During its initial stage, the Organisation shall operate on the basis of assistance provided by ICAO through a Technical Cooperation Project until such a time as its operation is consolidated.