



Agenda Item 2: Response of the States to the Consultation on the Constituent Agreement as a Result of the EANAI/1 Meeting

DRAFT CONSTITUENT AGREEMENT TO BE REVIEWED BY THE RAAC/11 MEETING

(Presented by the Secretariat)

SUMMARY

With a view to continue preparing the discussion material for the RAAC/11 meeting concerning the draft Constituent Agreement for the implementation of an RMO in the SAM Region, this working paper contains information on the results of the consultations made by the Regional Office regarding the comments made by civil aviation administrations on said draft agreement.

References:

- CAR/SAM FASID, CAR/SAM ANP Doc. 8733
- Reports of the GREPECAS/14 and GREPECAS/15 meetings.
- Report of the RAAC/10 meeting.
- Report of the EANAI/1 meeting.

1. Introduction

1.1 The EANAI/1 meeting, pursuant to Conclusion 10/8 of the RAAC/10 meeting, analysed the discussions held by GREPECAS on the institutional aspects concerning the implementation of multinational facilities and the establishment of a Regional Multinational Organization. The meeting took note of the multinational facilities that could be established to support the implementation of the ATM operational concept with a view to a regional/global ATM system, and of the benefits that would be derived from multinational facilities, based on regional cooperation through a regional mechanism like the RMO.

1.2 In this respect, the EANAI/1 meeting analysed in detail the draft Constituent Agreement for the establishment, operation, and management of a Regional Multinational Organization (RMO) that had been prepared by GREPECAS and recommended in Conclusion 14/5 of the regional group. Upon reviewing the agreement, the meeting introduced some amendments and considered that the new text was ready for submission to the forthcoming Eleventh Meeting of Civil Aviation Authorities (RAAC/11). Accordingly, it formulated Conclusion EANAI 1/1 as follows:

Conclusion EANAI 1/1- 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 the Constituent Agreement for the establishment, operation and management of a Regional Multinational Organisation (RMO) based on the guidance material prepared by GREPECAS (Conclusion 14/5) and incorporating any corrections this meeting may deem necessary, and approve and recommend it to SAM States for the establishment of an Institutional Agreement for the implementation of a Regional Multinational Organisation (RMO) in the Region.

2. Analysis

2.1 In 2008, as a follow up on the implementation of the conclusions formulated by the EANAI/1 meeting, the Regional Office made two consultations with the civil aviation administrations of the region. In this respect, no further opinions have been received in addition to those expressed and adopted at the EANAI/1 meeting, which would seem to indicate that, as stated at that meeting, the draft Constituent Agreement for the implementation of a Regional Multinational Organisation would be ready for revision and consideration by the forthcoming RAAC/11 meeting to be held next May in Santiago, Chile.

2.2 However, considering that the EANAI/2 meeting is an unique opportunity to revisit this matter in light of the activities carried out in the Region in 2008, it would seem advisable for this Meeting, in the event there was a motion to improve the text of the draft Constituent Agreement, to address this matter and document it for submission to the RAAC/11 meeting. **Appendix A** contains the text of the draft Constituent Agreement approved by the EANAI/1 meeting.

2.3 The meeting should consider the importance of presenting to the RAAC/11 meeting an agreed-upon document, since, upon approving the draft Constituent Agreement for the establishment of an RMO in the SAM Region, the cited meeting is expected to convene a Diplomatic Conference exclusively for analysing in detail the draft Agreement, and drafting and approving the final text of such agreement for the establishment of the Regional Multinational Organisation (RMO).

3. Suggested Action

3.1 The meeting is invited to take into account the information contained in this working paper, and consider any motions to improve the text of the draft Constituent Agreement shown in Appendix A, and document them for the forthcoming RAAC/11 meeting.

APPENDIX A**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 Contracting States agree to create a Regional Multinational Organisation (RMO) to provide and manage multinational facilities in order to 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 – 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, in accordance with what its bylaws may 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 exclusive 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 shall be free 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, 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.

Their representatives and officials shall also enjoy the necessary privileges and immunities to carry out with independence their responsibilities 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 – Duration

This agreement shall have an indefinite duration and shall cease to be effective should the Executive Council decide upon the dissolution of the Organisation.

Article 21 – 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 22 – 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 23 – 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 24 – Adherence

Non signatory States 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 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 became effective for them, by accordingly notifying ICAO, which shall communicate that act to the other Contracting States.

The denouncement of the Agreement shall become effective one year after the date on which the last of the Contracting Parties received the respective notification.

Article 27 – Dissolution

The Organization may be dissolved by unanimous decision of the Executive Council and shall continue to exist until such a time as it is definitively liquidated. Arrangements shall be made for the distribution and transfer of goods among the Contracting Parties and for the continuous provision of the services for which the Organisation is responsible.

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.
