

**International Civil Aviation Organization**

CAR/SAM Regional Planning Implementation Group (GREPECAS)

**Fourteenth Meeting of the CAR/SAM Regional Planning and Implementation Group (GREPECAS/14)**

(San Jose, Costa Rica, 16 to 20 April 2007)

**Agenda Item 3: Assessment of development of regional air navigation and security infrastructure****3.1 Report of the Institutional Aspects Task Force**

(Presented by the Secretariat)

**SUMMARY**

This working paper presents the results of the third meeting of the GREPECAS Institutional Aspects Task Force. The action to be taken by the Group appears in paragraph 3.

**References:**

- CAR/SAM Navigation Plan – FASID Vol. II;
- Eleventh Air Navigation Conference;
- Reports of GREPECAS/12 and GREPECAS/13;
- Reports of the first, second, and third meetings of the Institutional Aspects Task Force;
- Global Plan for CNS/ATM Systems(Doc. 9750);
- ALLPIRG/5 meeting;
- Sixth meeting of the Air Navigation Services Economics Panel; and
- Fourth Seminar on Institutional Aspects.

**1. Introduction**

1.1 The third meeting of the GREPECAS Institutional Aspects Task Force (IA/TF/3) was held in Rio de Janeiro, Brazil, on 12-14 December 2006. Thirty delegates, representing 7 members (Argentina, Brazil, Chile, Colombia, Cuba, Venezuela and COCESNA) and one Observer State (Bolivia) attended the meeting. The meeting took place immediately after the Fourth Seminar on Institutional Aspects, held in Rio de Janeiro, on 11 December 2006, and took into account the results of the seminar. The meeting formulated two draft conclusions and one draft decision for consideration by GREPECAS. The following paragraphs summarise the results of the meeting. Draft Conclusions and Decision are contained in **Appendix A**.

## 2. Report of the third meeting of the Institutional Aspects Task Force (IA/TF/3)

### *Review of the activities carried out by the Task Force (IA/TF), including the results of the ALLPIRG/5 meeting and the Conference of General Directors of Civil Aviation*

2.1 Under this agenda item, the meeting took note of the action taken by GREPECAS/13 (Chile, 14-18 November 2005) regarding the suitable operational scenarios, with respect to which GREPECAS had adopted Conclusions 13/2 – *CAR/SAM operational scenarios* and 13/3 – *Legal guidance material*, on the promotion among States and international organisations of the dissemination of guidance material on legal matters with a view to the development of the incorporation instrument for a Regional Multinational Organisation (RMO).

2.2 The meeting noted that the Conference of General Directors of Civil Aviation (Montreal, Canada, 20 – 22 March 2006) had agreed that both ICAO and the States should improve the efficacy of their technical assistance instruments and funding mechanisms. In this respect, it was also noted that the Conference had recognised the need for the States and other stakeholders, as well as financing institutions and donors in a position to do so, to contribute financially or in kind to support the States that needed assistance to resolve deficiencies and foster their implementation.

2.3 It was also noted that the fifth meeting of the ALLPIRG/5 group (Montreal, Canada, 23 - 24 March 2006) had analysed the problem of funding for the Regional Monitoring Agencies (RMAs) under a global approach based on cost recovery and step-by-step mechanisms for the implementation of cost-recovery arrangements. The meeting agreed to discuss this matter more in detail together with the results of the sixth meeting of the Air Navigation Services Economics Panel (ANSEP/6) under agenda item 4.

2.4 The meeting was informed of the results of the Fourth Seminar on Institutional Aspects, carried out within the framework of project RLA/98/003, with the collaboration of Brazil. **Appendix B** to this working paper presents the aforementioned results.

### *Review of principles and strategy for the implementation and subsequent management of multinational facilities*

2.5 Taking into account the documentation produced for the IA/TF/2 concerning the principles for developing a strategy for the implementation and subsequent management of multinational facilities in the CAR/SAM Regions, which had been analysed by GREPECAS/13, the meeting agreed that it should be subject to a new study and fine tuning so as to adjust it to the new changes being introduced to the amendment to the global implementation plan for CNS/ATM systems (Doc. 9750). However, the meeting advanced the work through the introduction of amendments, which would be completed once the new edition of the Global Air Navigation Plan for CNS/ATM was ready.

***Review of the work carried out by technical cooperation project RLA/98/003 concerning the administrative agreement and bylaws for the establishment of a Regional Multinational Organisation (RMO)***

2.6 When discussing this matter, the meeting considered the results of the Fourth Seminar on Institutional Aspects, where an extensive presentation had been made of the work done under project RLA/98/003 concerning the development of a generic incorporation agreement for the creation of a Regional Multinational Organisation (OMR) to support the implementation/consolidation of multinational facilities in the CAR/SAM Regions, and establish the management and provision of services through these systems. The meeting analysed the documentation submitted and unanimously convened that, although the draft incorporation agreement document contained some aspects that required clarification and/or adjustment, it was fully within the conceptual framework of an agreement for the implementation of a multinational system, in keeping with the guidance material contained in the FASID document of the CAR/SAM Air Navigation Plan (Doc. 8733).

2.6.1 The meeting clearly noted that the aforementioned draft incorporation agreement had been developed taking into account the conclusions of GREPECAS/12 and GREPECAS/13 on this matter, and the RMO definition approved by this regional mechanism, as follows:

“A regional/sub-regional international organisation created by virtue of an agreement among the States interested in operating a multinational facility, with legal capacity, managerial and financial autonomy, capable of contracting, acquiring, litigate, and decide over the goods and services of the Organisation.”

2.6.2 It was noted that the legal foundation of the incorporation agreement was the legal material reviewed by GREPECAS (Conclusion 13/3) and circulated to the relevant States and International Organisations. The meeting reviewed three documents concerning this matter: the first document was a summary of the content of the draft agreement; the second document was the draft incorporation agreement; and the third document was the draft bylaws of the RMO. During this review, the meeting amended Articles 1, 3, 4c), 4i), 4l) and 22. The draft bylaws were amended accordingly, and some corrections were also introduced to Articles 8 and 9 thereof. The revised versions of the aforementioned documents are shown in **Appendix C** (summary of the content of the draft agreement), **Appendix D** (draft incorporation agreement for the establishment, operation and management of an RMO) and **Appendix E** (draft bylaws) to this working paper.

2.6.3 The meeting noted that the SAM States were quite willing to study the implementation of an incorporation agreement of this type within the same scope. In view of the above, the meeting agreed to formulate draft Conclusion 3/1 - *Generic document concerning a draft incorporation agreement for a regional multinational organisation*, for the consideration of GREPECAS/14 meeting.

***Consideration of economic aspects and business cases for the implementation of CNS/ATM systems***

2.7 The meeting took note of the work done by the second meeting of the Task Force with respect to the economic aspects related to the implementation of CNS/ATM systems. This work was based on a document prepared by regional technical cooperation project RLA/98/003. In this regard, it was noted that guidelines had been developed for the cost-benefit analysis, and it was stated that this guidance material was available at the Secretariat for use as necessary.

2.8 It was noted that GREPECAS had defined three operational scenarios: one CAR, one SAM, and a possible CAR/SAM scenario in the event an institutional/inter-regional agreement was reached. The multinational facilities approved by GREPECAS would be implemented as initial systems already defined by this mechanism. For the cost-benefit analysis, mention was made of the fact that business cases could be developed within the RMO mechanism to identify the best implementation option for these multinational facilities in order to achieve ATM improvements. It was also noted that, based on the results of the ALLPIRG/5 meeting, ICAO would hold seminars on financial analysis with a view to training specialists in the ICAO Regions to carry out this task in the areas of cost-effectiveness and cost-benefit ratio.

2.9 The meeting reviewed the work done by the sixth meeting of the ANSEP and, in that respect, took note of the initiative to introduce guidelines for the States on an ICAO policy concerning the use by air navigation service providers (ANSPs) of systems to measure and manage efficacy. As to the method and scope of efficacy measurements, they would include safety, service quality, productivity, and cost-effectiveness. It also noted that the ANSEP was developing guidelines on air navigation service marketing to respond to ANSP initiatives on alternate services based on airspace section and flight phase.

2.9.1 Regarding the GNSS cost allocation study, it was noted that the completion of this matter had been considered a priority. The study would serve as a tool for civil aviation stakeholders in future discussions, consultations, and negotiations with GNSS operators and other users.

### **Support mechanism for the implementation of an RMO**

2.10 In line with the draft generic incorporation agreement for the implementation of an RMO (report on Agenda Item 3), the meeting considered that, in order to begin the implementation of an RMO, it would be advisable to establish a regional technical cooperation project that would last the time necessary for the establishment of the RMO and for the transfer of responsibilities to this new international organisation. This project would manage the multinational systems to be agreed upon within the scope of the RMO.

2.11 The possible objectives of this new project were discussed in detail, and it was noted that its objectives and activities could have some overlap with those of the recently circulated project CAR/SAM RLA/06/901. It was stated that this should be carefully analysed, since project RLA/06/901, due to its CAR/SAM scope, might include some States that were not those interested in creating the RMO. It was noted that the proposed project to support the implementation of the RMO was aimed at the planning, implementation, and management of multinational systems, which would require a specific design. The Meeting prepared a list of possible objectives for the regional project to support the implementation of the RMO, which appear in **Appendix F** to this working paper.

2.11.1 The meeting recognised that it would be advisable that the States/Territories interested in the implementation of an RMO and that ratify, or adhere to, the incorporation agreement, participate in the corresponding regional project to support the implementation of the RMO. In this sense, draft Conclusion 3/2 - *New regional technical cooperation project to facilitate the implementation of a Regional Multinational Organisation (OMR)*, was formulated.

### **Global cost-recovery approach for regional monitoring agencies (RMAs)**

2.12 The meeting analysed the action taken by ICAO to define a global cost-recovery approach for RMAs. In this regard, it took note of the work done by the ANSEP, which had agreed that RMAs should be established under the multinational facility model. In this sense, the ANSEP developed a detailed procedure for the implementation of an RMA in the form of a multinational facility, as well as the associated cost-recovery system. **Appendix G** shows the aforementioned procedure and the cost-recovery system.

2.12.1 On this matter, and considering Appendix G, the meeting noted that the establishment of CARSAMMA obeyed to a multinational structure and that Brazil, the State that manages and operates it, had not requested that consideration be given to cost recovery nor to the establishment of a shared cost arrangement. It was also mentioned that all CARSAMMA expenses were fully covered by Brazil and would continue to be so in the foreseeable future. Nevertheless, it was recognised that it would be useful to draft, based on the FASID guidance material, an administrative agreement document to address the step-by-step procedure contained in Appendix G. It was noted that, in the future, CARSAMMA could be comprised within the multinational facilities of an RMO. The meeting also took note of that contained in paragraphs 3.2.19 and 3.2.24 of the report of the GREPECAS/11 meeting on non-RVSM operations in RVSM airspace. Regarding the possible establishment of rates in the future, it was noted that this might require further study.

#### ***Other matters***

2.13 Under this agenda item, the meeting reviewed aspects related to the terms of reference, future work programme and membership of the group, as approved by GREPECAS, with a view to updated them. As a result of this, draft Decision 3/3 - *Amendment to the terms of reference and work programme of the Institutional Aspects Task Force*, was formulated.

2.13.1 The participants were requested to suggest alternate venues for the next meeting of the Task Force. In this sense, the proposal of Colombia to hold it in Cartagena de Indias, Colombia, was supported.

### **3. Suggested action**

3.1 The meeting is invited to consider the information contained in this working paper, in order to:

- a) be aware of the results of the Third Seminar on Institutional Aspects;
- b) approve the draft conclusions proposed in paragraphs 2.6.4 and 2.11.2;
- c) approve the draft decision contained in paragraph 2.13; and
- d) formulate other actions to encourage and improve the future work of the Task Force.

## APPENDIX A

### DRAFT CONCLUSIONS AND DECISION ADOPTED DURING IA/TF/3 MEETING, TO BE SUBMITTED FOR CONSIDERATION OF GREPECAS

#### DRAFT CONCLUSIONS

##### DRAFT

#### CONCLUSION 3/1- **GENERIC DOCUMENT CONCERNING A DRAFT INCORPORATION AGREEMENT FOR A REGIONAL MULTINATIONAL ORGANISATION**

Considering that the most effective way of implementing/consolidating multinational facilities and managing and providing services is through the implementation of a Regional Multinational Organisation, and that this requires a basic reference document, based on which the interested States/Territories and ICAO may conduct the necessary studies:

- a) approves, in principle, the summary of the content of the draft incorporation agreement for a Regional Multinational Organisation (RMO), shown in **Appendix C**, the draft incorporation agreement for the establishment, operation, and management of an RMO, shown in **Appendix D**, and the corresponding draft bylaws shown in **Appendix E** to this part of the report;
- b) recommends that the States/Territories interested in implementing an RMO use the material in the aforementioned Appendices C, D and E as a reference for their studies on this matter; and
- c) requests the NACC and SAM Regional Offices to submit information on the progress made with respect to the action recommended under b) above.

##### DRAFT

#### CONCLUSION 3/2- **NEW REGIONAL TECHNICAL COOPERATION PROJECT TO FACILITATE THE IMPLEMENTATION OF A REGIONAL MULTINATIONAL ORGANISATION (OMR)**

Taking into account the directives of GREPECAS with respect to the implementation of multinational facilities, and with a view to supporting said implementation through the creation of an RMO in the CAR/SAM Regions, that:

- d) ICAO consider the development of a Regional Technical Cooperation Project for the implementation of RMOs in the CAR/SAM Regions, which would be linked to the Incorporation Agreement for establishment, operation, and management of the latter, in such a way that the State/Territory that signs and ratifies or adheres to the aforementioned agreement, for that same fact, would participate in the cited regional technical cooperation project;
- e) It be considered that the objectives of the aforementioned project could be, in principle, those shown in **Appendix F**; and

- f) ICAO design and circulate, in due time, to the States/Territories/International Organisations, the Regional Technical Cooperation Project, for comments.

**DRAFT DECISION**

**DRAFT  
DECISION 3/3 - AMENDMENT TO THE TERMS OF REFERENCE AND WORK  
PROGRAMME OF THE INSTITUTIONAL ASPECTS TASK FORCE**

That the GREPECAS/14 meeting consider for approval the new terms of reference and work programme of the Institutional Aspects Task Force, shown in **Appendix H** to this part of the report.

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**APPENDIX B****SUMMARY OF THE RESULTS OF THE FOURTH SEMINAR ON INSTITUTIONAL ASPECTS**

(Rio de Janeiro, Brazil, 11 December 2006)

As customary, this Fourth Seminar on Institutional Aspects was held with the purpose of preparing for the discussion on the agenda items of the meeting of the Institutional Aspects Task Force, in this case, the third meeting. Information on the contents of the seminar is given below.

**1. CNS/ATM implementation and institutional aspects**

1.1 The Seminar was informed about the plans being developed by ICAO, in coordination with the global ATM community, to strengthen the implementation of the recommendations of the Eleventh Air Navigation Conference (AN/Conf. 11). It was stated that the ICAO Secretariat was preparing proposals for a new amendment to the CNS/ATM Global Air Navigation Plan and that, together with the industry, had developed 23 Global Plan Initiatives (GPIs) that are consistent with the ATM operational concept and that would facilitate the planning towards the global ATM. It was also mentioned that ICAO was aligning its technical programme with the ATM operational concept, and was developing high-level guidance material to facilitate the implementation of this concept. It was also reported that ICAO was linking the key activities of its strategic objectives to the aforementioned GPIs.

1.2 Updated information was presented on the progress made in the area of institutional aspects in the CAR/SAM Regions, explaining the work done by Regional Project RLA/98/003, which serves as a supporting mechanism to GREPECAS. In this respect, mention was made of the work done with respect to a Constituent Agreement for the implementation of a Regional Multinational Organisation (RMO), and of the prospect of implementing within the RMO multinational facilities already defined by GREPECAS.

1.3 Venezuela made a detailed presentation of the modernisation of its CNS/ATM and other systems for the operation of international/domestic airports, and also for search and rescue. This modernisation process was being conducted with the support of an ICAO technical cooperation project. The investment would be of approximately 220 million dollars. It was stated that, with this substantial improvement, Venezuela expected to be better prepared for the transition to the global ATM and to support regional developments.

1.4 Taking into account the documentation prepared for the third meeting of the Task Force, Colombia made an interesting presentation on some doubts that existed regarding the course that CAR/SAM CNS/ATM implementation plans might take. This generated interest in the discussion of these issues at the meeting and in the analysis of the generic document concerning the draft Constituent Agreement for the implementation of an RMO.

## 2. **Generic document concerning a draft Constituent Agreement for the establishment of an RMO**

2.1 ICAO developed the reference document under regional project RLA/98/003, taking into account the results of the second meeting of the Task Force concerning the legal matters. The expert hired by the aforementioned project made an extensive and detailed presentation of the content of the document, explaining how an RMO would be established, and addressing the high-level technical/operational aspects, organisational aspects of this RMO, and the relevant financial, legal, and economic aspects. The participants at the Seminar requested that this presentation be as detailed as possible, since it would serve for the discussion of WP/4 prepared for the third meeting of the Task Force. The presentation clarified many concepts for the participants, who recognised the importance of this matter, and also expressed that a document was finally available for the study of this topic, which would facilitate the implementation of multinational facilities, as recommended by the GREPECAS mechanism.

## 3. **Introduction to business case studies**

3.1 The ICAO Secretariat made an introductory presentation to business case studies. Information was provided as to who benefits from them, their structure, and the expected results in keeping with the methodology used. Information was provided about the business case model recently developed by ICAO and which was presented at the ALLPIRG meeting, which made recommendations in the form of conclusions in the sense that ICAO should organise seminars on this matter in the Regions, and training be provided in the States to specialists in business case development and the corresponding financial aspects.

3.2 Following the presentation, a workshop was held on the application of the new software tool on the aforementioned business case model, and practical exercises were conducted in simulated operational scenarios. The model was well received by the participants of the workshop.

## APPENDIX C

### SUMMARY OF THE CONTENT OF THE DRAFT AGREEMENT FOR THE CREATION OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)

The Whereas clauses would be the preamble of or introduction to the agreement, and they mention and explain the legal background and foundations supporting it, namely:

- a) The Convention on International Civil Aviation (Chicago Convention,) and, specifically, articles 28 and 15
- b) Standards and recommended practices on the Convention on International Civil Aviation (Chicago, 1944)
- c) ICAO Assembly Resolutions, namely:
  - 1.- Resolution A32-19: Letter on the rights and obligations of States with respect to GNSS services.
  - 2.- Resolution A32-20: Development and drafting of an appropriate long-term legal framework to govern GNSS implementation.
  - 3.- Resolution A35-3: Practical way to further the legal and institutional aspects of communication, navigation, and surveillance and air traffic management (CNS/ATM) systems.
  - 4.- Resolution A-35-15: Revised statement of ongoing ICAO policies and practices regarding a global air traffic management system (ATM) and the communication, navigation, and surveillance and air traffic management (CNS/ATM) systems.
  - 5.- Resolution A35-7: Unified strategy to resolve safety-related deficiencies.
- d) Conclusions 13/2 and 13/3 of the CAR/SAM Regional Planning and Implementation Group (GREPECAS), thirteenth meeting, held in Santiago – Chile, on 14-18 November 2005.

As to the clauses of the draft agreement for the creation of Regional Multinational Organisation (RMO), we can make the following remarks:

#### Creation:

The so-called originating or founding States are the ones that will negotiate the treaty that will create the RMO; they will become member States of the Organisation, once the Legislative Branch of each of them has ratified the agreement, and will have full participation therein, in the sense that they shall be entitled to all the rights and obligations arising from the constituent provisions.

The legal existence of RMO will result from a multilateral legal act, prior and outside of the Organisation, emanating from sovereign States, that will take the form of a multilateral treaty, which is generally agreed upon within the framework of an intergovernmental conference and based upon the standards of the law of treaties (Vienna Convention on the Law of Treaties – 1969).

The starting point could be a meeting of Directors of Civil Aeronautics of the States concerned, who will recommend that a diplomatic conference be summoned to create the RMO, to be attended by plenipotentiaries of said States.

Name: The specific name given to the constituent act or instrument is Agreement, and the RMO should also be given a special name and an abbreviated denomination, if applicable, usually expressed by its acronym. In this sense, we would have an agreement with a specific nature, with conventional and constitutional attributes, considering that a new international legal entity is being created.

Scope: The scope is the definition and description of the RMO, which, in this case, will be the provision and management of international facilities, in order to implement the ATM operational concept with a view to the global ATM, supported by communication, navigation, and surveillance and air traffic management (CNS/ATM) systems, and to provide assistance on safety oversight, pursuant to ICAO standards and recommended practices. These services will be rendered in the territory of the contracting Parties and in all those zones or areas of responsibility pursuant to Regional Air Navigation Agreements and of other States to whom the responsibility could be assigned by virtue of bilateral or multilateral agreements.

Nature: The RMO will be a legal entity different from the States and necessary to comply with the purposes it was created for, and therefore limited to meeting the objectives set out by the founders. Although the performance of the RMO will depend upon the presence of its member States, it shall be capable of developing and expressing an autonomous will within the scope of its competence, in such a way that the decisions taken by any of its bodies will be considered as decisions of the Organisation and not of its Members.

Therefore, the representation of the States is delegated in such a way that their expressed will is identified with the legal entity (RMO) of which both –assignor and assignee- are parties to.

Consequently, the RMO shall have sufficient legal capacity to be a holder of duties and obligations for the pursuit of its objectives and the fulfilment of its duties within the territory of the contracting Parties and in its relationships with other international entities.

In principle, the scope of its legal status will emanate from its constituent instrument, and will be evolutionary and non-static.

In summary, the main characteristics of the RMO will be:

- a) It will have special legal status because it will be limited to its assigned objectives and functions;
- b) It may exercise certain rights and undertake certain obligations within the framework of concrete legal systems both within the States and internationally;
- c) It will have managerial and financial autonomy to hire, purchase and dispose of goods and service; and
- d) It will be empowered to bring about lawsuits, appear in trial and to be represented out of court.

Purpose: The purpose of the RMO will be limited, since it will be the one stated in the Agreement. Thus, we can state that it will have a functional status in keeping with the speciality that inspires it.

Thus, the purpose of the Organisation will be to provide and manage the following facilities:

- a) those foreseen in the ICAO Regional Plan, in keeping with the corresponding bylaws;
- b) assistance for the effective fulfilment of safety oversight responsibilities by the States; and
- c) other services not foreseen in the CAR/SAM Regional Air Navigation Plan, through bilateral or multilateral contracts or agreements (for example, overflights).

Rights, duties and responsibilities of States:

The guiding principle concerning the status of RMO member States will be that of equal rights and obligations.

The basic and essential right will consist in the participation in the bodies of the Organisation and in their decision-making process, through representatives appointed by the governments of the respective member States.

In general, the obligations derived from membership consist in cooperating with the Organisation for the achievement common objectives; achieving financial balance for its proper operation, and respecting the independence of RMO officials.

RMO liability:

Since the RMO will be an international legal entity, it will be liable for damages resulting from the operation of the facilities and/or services under its responsibility and *vis-à-vis* third parties. These risks shall be covered by the appropriate insurance.

Functions and authority: The rights and powers of the RMO are related to all those subject matters covered by the objectives set forth in the constituent instrument.

As the Organisation starts operating, it will be generating its own legal order, which will have an impact within the organisation, since it will govern the relationship among its bodies and with the outside, since it will govern the relationship between member States and the RMO, between the RMO and other international entities, and also with the users.

RMO operations will be based on an autonomous regulatory power, in light of the competencies it will be given by its founders--the States--in the Agreement, and will be implemented based on the decisions that it makes, in writing and in practice, aimed at regulating its own operation and management. Some examples of this are: the appointment of officials or agents, budget approval, the creation of technical, operational, and administrative offices, and the approval of bylaws and internal regulations.

The functions and duties of the RMO will expressly and implicitly emanate from the provisions of the Constituent Agreement, and will have the characteristics of its specialty, while the achievement of its concrete objectives defines the scope of the competencies established by member States.

The express or explicit duties shall be those listed in the constituent agreement or in subsequent agreements.

The specific function of the RMO that will be created will be to exercise exclusive rights in connection with the provision, definition, reception, and management of the services described in the respective article, in keeping with the standards and recommended practices of the Annexes to the Convention on International Civil Aviation (Chicago, 1944).

On the other hand, the implicit duties are those that are not formally or expressly listed, but emanate from the agreement because they can be inferred from an extensive interpretation of that text, and are indispensable for a more complete completion of the tasks vested upon the RMO.

In this sense, the international doctrine has established that implicit duties are legitimate if they fall within the general duties foreseen in the constituent agreement and are compatible with its spirit.

As an example, we can mention the following duties that were included in the draft:

- a) To conduct the necessary technical, operational, and administrative studies and take the necessary action to meet its objective, taking into account the development of civil international aviation and compliance with the standards of The Convention on International Civil Aviation (Chicago Convention,).
- b) To study, advice, recommend, facilitate, decide on, and implement all those issues connected with the normal or regular operation of the Organisation.
- c) To carry out any other activity requested by member States that is connected to its purpose and falls within its capacity.

Organisational chart: The RMO will have a permanent institutional structure, made up by various administrative, technical, and operational bodies that will permit the continuous and stable operation of the Organisation and will be capable of expressing an independent legal will.

These bodies would be different and independent from those of member States, will be set out to last, and will be responsible for managing the collective and common objectives and interests of the RMO. Accordingly, they shall be provided with the appropriate and necessary means.

Notwithstanding the above, the organisational chart of the RMO must not be static but rather be subject to the dynamism of the aeronautical activity and allow for the introduction of changes in order to adapt to the new international technical and operational circumstances.

Based on a functional criterion, the organisational chart of the RMO will be as follows:

- a) A deliberative and decision-making body, working as a plenary assembly in which all member States will participate through their delegates or representatives; it will be intergovernmental and can take various names: governing body, governing board, or board.
- b) An executive body in charge of overall and day-to-day management and administration, which may be called Executive Director or General Manager, to be performed by an international official or agent.
- c) Various technical, operational, and administrative bureaus or managerial offices.

In summary, the Organisation would be made up and managed by:

- a) A governing body
- b) An executive director, and
- c) The necessary and appropriate technical, operational, and administrative bureaus (headed by managers) to carry out the entrusted duties, notwithstanding the offices or station agencies that could be located in the territory of each of the contracting Parties.

- The governing body shall be made up by a representative of each contracting Parties and a substitute to replace that representative in case of absence; they shall both be appointed by said member State, and it would be very important and convenient if they were proficient in aeronautical matters.

They will be officials holding elected positions and their representation will be functional in nature, since they will be part of bodies that are independent from the States that appointed them.

The governing body will have a president and a vice-president; their term in office will be time-limited, and they will be elected from among its members on a rotational base.

All the members of the governing body can learn about and voice their opinions on the activities of the Organisation, and, therefore, it shall be in charge of setting the direction of the Organisation, approve budgets, and perform financial management, and decide over all those matters that are significant and indispensable for its general operations.

This body will get the support of other bodies that report to it, that have a different composition, with experts on its subject matter.

In absence of a universal nature, its small number of participants will facilitate work continuity and decision-making on regulatory, technical, and operational matters.

- The Executive Director, appointed by the deliberative body, to which he/she shall report, will be a national of any of the contracting parties. The duration (usually from three to six years) and conditions (whether or not it can be extended) of tenure will be determined, together with the type of election, and the position requirements.

A detailed list of the duties of both the governing body and the executive director may be included in the bylaws of the RMO and may be supplemented with one or several internal operational regulations.

- The technical, operational, and administrative bureaus or managerial offices will express the dynamic nature of the aeronautical activity and their adaptation to its practical evolution. Consequently, they could be merged, or existing ones be eliminated, or new bodies be established.

The competence for the creation of these new bureaus will emanate of the powers vested on the governing body, as the main decision-making body of the RMO.

Control bodies: The control function means that the bodies that supplement it are different from both the Organisation and the governments of members States.

These bodies shall basically perform the technical, operational, and financial control of the Organisation. Since the RMO will have its own budget, it will have to be subject to economic control mechanisms.

The RMO will be subject to the following audits, in order to control its activities:

a) internal audit

b) annual external to be performed by someone proposed by the Executive Director and approved by the Governing Body

c) security and safety foreseen by ICAO

Determination of will: The RMO shall be guided by a democratic principle; that is, all of its members are equal in the sense that each member will have one vote.

The legal will of the RMO is expressed in the decisions approved by the internal bodies, for which the Organisation is directly responsible and at the same time they would be binding for all member States.

In its constituent agreement, the RMO shall establish the voting procedures and modalities to be applied and the internal bodies that must participate in it.

The decision-making modality that has been foreseen is a qualified majority (*i.e.*, to require a majority that exceeds the so-called simple or absolute majority, which, in this case, would be the favourable vote of two thirds) as a general rule, and unanimity, for exceptional circumstances.

Indeed, the unanimity rule shall be the exception, because, although related to the respect for State sovereignty upon considering the principle of equality among members, it has the problem that it would be very difficult to make decisions and it would lead to a certain standstill of the RMO.

On the other hand, the qualified majority procedure will expedite the approval of resolutions, without detriment to the fact that efforts would be made to reach a general agreement if interests at stake are very important and could affect any of the member States.

Staff: In order to fulfil its functions, the RMO—as a corporation—, must have human resources, *i.e.*, international officials or agents through which it will act.

The existence of a body or group of international officials or agents working for the Organisation on a continuous and exclusive, or temporary, basis will enable it to carry out its technical, operational, and administrative activities.

Particularly, the Organisation will hire—directly—employees who are citizens of the member States, except in duly justified exceptional circumstances or situations, like, for instance, technical or operational qualifications, which shall be assessed and decided over by the governing body on a case-by-case basis.

Due to the international nature of his/her work, the official will be independent from the member State from which he/she is a citizen, and will have functional protection granted by the Organisation through the so-called jurisdictional guarantees.

The RMO internal bodies will also control the appointment and performance of the staff.

Notwithstanding certain specific provisions of the constituent agreement, the staff would have its own labour regime, to which end, the respective bylaws must be drafted and approved, taking as a legal basis those of the United Nations Organisation.

This statutory regime will define most aspects of its legal condition and shall consider the set of standards that will define the rights and obligations of the officials and the RMO in relation to the following topics or issues:

Citizenship, origin, quantity, distribution, selection requirements and modalities, hiring conditions, categories, inabilities and incompatibilities, rights and obligations, compensation or salary scheme, tax exemptions, bonds, sanctions, causes for dismissal, work hazard coverage, and retirement scheme.

On the other hand, and if necessary, the RMO may hire external experts, from time to time or on a temporary basis, to carry out specific functions.

Financial regime: Also, for the achievement of its objectives, the RMO shall have the financial means to cover the expenses derived from its operations (equipment, maintenance of facilities, personnel, administration, meetings of its bodies, travel, publications, etc.).

In relation to a given period—generally, one year—and given the need to establish programmes that must be implemented within a given term, income and expenditures must be reflected in the budget of the RMO, the draft of which will be prepared by the executive director, and will be approved by the decision-making body (the governing body).

Income will be derived from the resources generated by the RMO. To this end, it shall establish a financial policy that will allow it to achieve a financial balance, trying to avoid bureaucracy.

The financial regime is divided into two stages:

- a) the establishment and initial operation of the Organisation, to which end ICAO may provide assistance through a Technical Cooperation Project to be funded by the States.
- b) subsequent operation, to be funded through the generation of its own resources. This will allow the RMO to ensure its regular operation, achieve a higher level of financial autonomy, and strengthen its independent legal status.

The resources of the Organisations could be derived mostly from the rates paid by individuals or corporations that operate aircraft at the time when the flight has taken place.

The RMO will be subject to financial control mechanisms, aimed at reviewing the accounts, regularity, and good management of income and expenditures.

Term or duration: In general, this type of international organisation is characterised by its permanence, *i.e.*, it is intended to last, and often the agreement is for an indefinite period of time.

In this case, it has been foreseen that it will have a limited duration, to be determined, and the possibility of automatic and successive extensions for equal periods of time or for a different term, also to be agreed upon.

In this respect, the continuity of the RMO should not be affected by possible changes resulting from its composition (increase or reduction in the number of members) or its adjustment to new international circumstances, such as technical or operational aspects, or the revision of its constituent agreement.

Headquarters: In absence of its own territory, the RMO will be forced to establish its headquarters in one of the contracting States.

The headquarters may be defined in the constituent agreement or during the initial stage of the RMO, and could vary during the life of the Organisation. This circumstance should be contemplated in the respective bylaws, including the possibility for the Governing Body to change it.

The legal consequences of the physical establishment of the RMO are specified in the so-called “Headquarters Agreement”, signed by the Organisation and what might be called the “host” State.

Legal capacity, privileges and immunities: Since the RMO will have to operate in the territory of the States to perform its assigned functions, it will be granted legal capacity within the internal legal system of each of its member States, supplementing such recognition with a number of the facilities, privileges, and immunities required to achieve its objective, which must be mentioned in the constituent agreement.

The legal capacity of the RMO in the local legislations will be limited to the specialisation principle; that is, it will be inferred from its own rules and it will operate within the scope of the assigned objectives and functions, like, for instance, the hiring capacity that is limited to the services required for its customary, normal and regular operation.

Some of these matters need to be taken into account at such time when the so-called Headquarters Agreement is signed between the RMO and the State in whose territory it will be established.

In this sense, it must also be taken into account that, even though national State legislations acknowledge the legal capacity of the RMO, they might contain certain limitations or requirements that are incompatible with the performance of this capacity.

The privileges and exemptions granted to international organisations, their equity, income, acts, and contracts, in order to enable its operation include those in connection with financial, tax, and customs issues.

In turn, RMO representatives and officials must also be entitled to the privileges and immunities necessary for them to perform their duties independently. This is a functional protection granted by the Organisation.

Jurisdiction immunity: Jurisdiction immunity is a general and very common clause that is included in practically every constituent agreement of international organisations. It specifies that only when they expressly waive such immunity can they be brought before the courts of the States that are party to it or member States.

RMO officials and agents can also enjoy this immunity with regard to all the acts they carry out in performing their official duties.

The goods and salaries can also enjoy immunity against any legal procedure, unless there is an express waiver. Nevertheless, this waiver will not apply to the execution of court rulings.

Infringement: According to article 12 of the Convention on International Civil Aviation (Chicago, 1944), the Organisation shall undertake to report to the relevant national authorities, which shall in general be those related to aviation, any alleged infringement of air navigation standards that occurs within its jurisdiction, and it shall send to the relevant State, the background information evidencing the infringement or omission which makes up the infringement, so that the corresponding action may be taken.

Dispute resolution: Although the interpretation and enforcement of the provisions of the constituent agreement and the RMO bylaws is a constant and regular activity of its internal bodies, whenever a conflict or dispute arises in this respect, the dispute resolution mechanisms foreseen in the same agreement will have to be applied. These could be:

- a) mediation by the Executive Director, that is, the intervention of a third party, whose decision shall not be legally binding; and, if no solution is reached:
- b) final decision by the Governing Body; or, arbitration at the request of any of the conflicting parties.

The form and procedures to resolve these issues can be included in the text of the bylaws.

#### Final provisions:

Signature: It is the signature and expression of the name and last name of the individual who is vested with plenipotentiary powers, together with the identification of the State he/she represents, which will be placed at the end of the agreement to prove that whoever signs is duly authorised and can bind to the agreement.

Before entering into force, the agreement will be available for signing by any other State interested in participating.

Ratification: This is the approval or confirmation of the agreement that was signed by a State representative in connection with the rights and obligations to be undertaken.

It means that the State concerned accepts as its own the legal act or agreement executed by a proxy on its behalf.

All in all, it is the decision whereby each of the competent State authorities, normally the Legislative Branch, Congress or Parliament, acknowledges the agreement signed by its representative.

The entry into force of the international agreement that creates the RMO defines its birth, and the conditions for its effectiveness must be established in this text, in the sense of determining the number of ratifications required.

In this case, it will require the ratification of a minimum number of signatory States to the constituent agreement, since it is a regional or restricted organisation where cooperation and integration links prevail.

This ratification involves the deposit of the respective ratification instrument of the signatory parties, where the depository must be identified. It may be ICAO, the State where the agreement is signed, or any of the States party to the agreement.

As of the entry into force of the constituent agreement, the States party to the agreement become member States of the Organisation being established.

Registration: This is the annotation or recording of the agreement; in this case, it shall be the act by virtue of which ICAO records the treaty, pursuant to article 83 of the Convention on International Civil Aviation (Chicago, 1944).

Accession: This is the act whereby a State agrees to, approves or accepts the terms of the agreement after it has entered into force; in other words, it is the admission of a State after the Organisation has been established.

Unlike the founding States, the participation by new States will be subject to the admission rules and procedures defined in the agreement, and will require the intervention of RMO institutions.

In this regard, the plenary body of the Organisation will review the application, and will make a unanimous decision.

To become a new member, two wills have to agree: that of the State submitting the candidacy and that of the Organisation which will eventually accept the application; and compliance of the formal aspects regarding the submittal of the accession instrument to the designated depository.

Moreover, the accession will require negotiations with the candidate, resulting in an agreement between said State and the Organisation, addressing the technical, operational, financial, and administrative issues that will enable its accession.

Amendment: It is any change that any of the contracting parties may propose in order to modify the agreement, and shall be submitted to the governing body for preliminary review and, if applicable, approved unanimously by said contracting parties.

Notice of termination: All members have the inherent right to withdraw from the RMO, which is equivalent to a unilateral termination of the constituent agreement and its possible modifications. This will be done in keeping with the provisions of the agreement itself.

The possibility that a member State withdraws from the Organisation may be subject to some conditions: minimum time of effectiveness of the RMO and prior notice to the depository, who shall in turn inform this to the other contracting States.

For this termination to be valid, it should involve a notice of at least one year in advance, calculated from the date when the last contracting party received the corresponding notice from the depository.

Consideration should also be given to settling the accounts of the State that will lose its membership.

The dissolution is the act whereby a legal relationship is terminated or ended; in this case, it will be the annulment, liquidation or conclusion of the agreement as a result of the principle of freedom that also inspires the creation of, and participation in, the Organisation.

The dissolution of the RMO could be due to the specific duration of the constituent agreement, to a major change of circumstances whereby the common interests that gave rise to its creation are eliminated, or to serious financial difficulties in its operation.

Since this is an exceptional assumption, the dissolution of the RMO will require a unanimous decision by the governing body, *i.e.*, the body where all the member States are represented.

The Organisation must keep on existing until its final or definitive dissolution; therefore, a transition period and mechanisms need to be foreseen to facilitate the distribution and transfer of the goods, rights, and obligations of the RMO to a new organisation or to the contracting parties.

In summary, in case of dissolution, the following issues must be considered:

- a) the continued provision of CNS/ATM and safety oversight services;
- b) the situation of the members of the Organisation;
- c) the situation of RMO officials and agents;
- d) the succession of the functions, competencies, and equity of the dissolving Organisation since this could create difficulties; for example, the financial compensation of contracting Parties in proportion to their contributions, like, for instance, in connection with the host State.

Transitory provisions: If any, these should be contained in the constituent agreement. In this case, the initial operation and the financial scheme of the RMO have been envisaged.

Initial issues prior to the start-up of the RMO:

- a) Determine the headquarters for the Organisation
- b) Appoint the representatives to the governing body
- c) Designate the executive director
- d) Draft or plan the bylaws (general and for staff) and internal regulations; this can be done through an ICAO technical cooperation project
- e) Have available the initial budget
- f) Hire the personnel required for the Organisation

**APPENDIX D****DRAFT CONSTITUENT AGREEMENT FOR THE CREATION, OPERATION AND MANAGEMENT OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)**

Whereas none of the aspects inherent to the communication, navigation, and surveillance/air traffic management (CNS/ATM) systems is incompatible with the Convention on International Civil Aviation (Chicago 1944) and the standards and recommended practices thereof, and therefore there are no legal obstacles for its establishment and operation pursuant to Resolutions A32-19, A32-20, and A35 of the Assembly of the International Civil Aviation Organization (ICAO);

Whereas the States have the authority and responsibility over air navigation control and compliance of safety oversight standards within the airspace under their sovereignty, in accordance with Article 28 of the Convention on International Civil Aviation (Chicago 1944);

Whereas ICAO Assembly Resolutions A32-19, A32-20, and A-35-15 on this subject matter urge for cooperation and mutual assistance among the States in order to achieve the highest possible level of uniformity in the provision of CNS/ATM services;

Whereas regional initiatives concerning the development and planning of international air navigation principles and methods, the enhancement of international civil aviation safety to prevent and reduce the negative impact of operational failures of CNS/ATM systems and effectively fulfill with safety responsibilities, are important;

Whereas regional cooperation is effective for implementing and consolidating CNS/ATM systems with a view to the Global ATM, and the safety system, taking into account ICAO standards, recommendations, and guidance, and in particular, Assembly Resolutions A35-3 and A35-7;

Whereas ICAO Assembly Resolution A35-7 encourages the States to promote the creation of regional and sub-regional partnerships to collaborate in the development of solutions to common problems, in order to strengthen their individual safety oversight capacity;

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

Whereas CNS/ATM systems are of a regional/global scope and the investment required for their implementation and operation is significant, and in order to achieve greater efficiency and savings, avoiding duplication of human and material resources, it is essential to seek international regional cooperation in light of the benefits to be derived from the sharing of facilities, services, and costs, and the possibility of obtaining common funding and benefits.

Whereas cost distribution among users must be reasonable, its implementation and the recovery of costs will be done in keeping with 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 safety oversight cooperation, giving access to as many States as possible in order to apply the principle of uniformity to the standards and procedures regarding international air navigation and safety.

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

Whereas the CAR/SAM regional planning and implementation group (GREPECAS), at its thirteenth meeting, held on 14-18 November 2005, concluded that the CAR and/or SAM Regions be considered as potential operational scenarios for the establishment and management of multinational facilities and that there were sufficient legal principles to implement some systems in the short and medium term (Conclusions 13/2 and 13/3);

The following has been agreed upon:

## **CONSTITUENT AGREEMENT FOR THE CREATION OF A REGIONAL MULTINATIONAL ORGANISATION (RMO)**

### **Article 1 – Scope**

The contracting States agree to establish a Regional Multinational Organisation (**RMO**) for the provision and management of 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 for the provision of assistance on safety oversight, in accordance with the standards and recommended practices of the International Civil Aviation Organization (ICAO) that will be called ... and hereinafter referred to as ... (in this document “the Organisation”).

### **Article 2 – Nature**

The Organisation will have legal capacity, it will exercise its rights and undertake obligations and will have the financial and managerial autonomy required to hire, purchase and dispose of the goods and services of the Organisation, and to promote legal action, appear in trials, and be represented out of court.

### **Article 3 – Purpose**

The purpose of the Organisation is to provide and manage the multinational facilities foreseen in the ICAO Regional Plan, in keeping with the provisions set forth in the respective bylaws, and to provide assistance for the effective fulfilment by the States of their safety responsibilities in the territory of the Contracting Parties and in all those areas of responsibility according to the Regional Air Navigation Agreements and those of other States which have been assigned to it by virtue of a bilateral or multilateral agreement.

The Organisation may also provide public air navigation services not foreseen in the CAR/SAM Regional Air Navigation Plan, as well as advisory services on safety oversight in keeping with the respective bylaws and through bilateral or multilateral contracts or agreements.

### **Article 4 – Duties and powers**

The Organisation will have the following duties and powers:

- a) Exercise exclusive rights in connection with the provision, establishment, reception, and management of the services mentioned in the previous article.
- b) Establish an economic policy that permits the achievement of a financial balance, through the raising of its own resources.

c) Obtain loan in the financial markets, which can be guaranteed by Contracting Parties or others, if necessary.

d) Propose to Contracting Parties the standardisation of national regulations, rules, and procedures concerning air navigation and safety oversight services, in accordance with the standards and recommended practices contained in the Annexes to the Convention on International Civil Aviation (Chicago, 1944).

e) Conduct the necessary technical, operational, and administrative studies and take the corresponding action for the achievement of its objective, taking into account the evolution and development of international civil aviation and compliance of the standards of the Convention on International Civil Aviation (Chicago, 1944).

f) Propose to Contracting Parties the relevant modifications to the ICAO Regional Air Navigation Plan, if necessary.

g) Provide appropriate training to its staff on an ongoing basis.

h) Establish the required links with the States and International Organisations in order to perform its duties.

i) Request from, and report to, the competent national authorities all relevant information and alleged infringements to air navigation standards occurred within its jurisdiction.

j) Assess the standardisation of systems within the territory of contracting parties.

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

l) Undertake any other activity required by member States that is related to its purpose and which falls within its capacity.

#### **Article 5 – Liability and insurance**

The Organisation shall cover all risks derived from any liability for damages resulting from the operation of facilities and/or services *vis-à-vis* third parties, by hiring the appropriate insurance.

#### **Article 6 – Structure**

The Organisation will be structured with a Governing Body, an Executive Director, and the appropriate technical, operational, and administrative offices required to carry out the assigned duties. The Executive body shall not be complicated so that the daily and regular operation of the RMO will be agile. The tasks to be carried out by the officials shall include technical, operational, and administrative aspect related to implementation and representation.

#### **Article 7 – Governing body**

The Organisation will be managed by a Governing Body composed of one representative of each Contracting Party, who will have an alternate to replace him/her in case of absence, both being designated by the Contracting Party and they should both be proficient in aviation.

The Governing Body will have a President and a Vice President, who will be elected among its members on a rotational basis, and for the period of time established in the bylaws.

### **Article 8 – Duties of the Governing Body**

The Governing Body will have the following functions:

- a) Adopt a common policy regarding the operation and management of multinational systems.
- b) Set the rates and fees to be paid by service users.
- c) Designate the Executive Director and the technical, operational, and administrative Directors following the proposal of the Executive Director.
- d) Approve the hiring of the insurance defined in article 5 from the companies it deems appropriate.
- e) Approve the annual budget, before (specify the date or period of time) of the year prior to its application, and its possible modifications.
- f) Approve the bylaws and Internal Regulations of the Organisation, and generate amendments thereto, based on the proposals of the Executive Director.
- g) Approve the amount and conditions of loans obtained in the financial markets to pursue its objectives.

### **Article 9 – Executive Director**

The Governing Body will appoint an Executive Director who will be a citizen of any of the Contracting Parties, with a tenure of ... (at least four) years.

### **Article 10 – Duties of the Executive Director**

The Executive Director will have the following functions:

- a) Sign all the documents required for the operation of the Organisation, within the scope of his/her competence.
- b) Submit all the reports required by the Governing Body.
- c) Set the policy concerning the staff to be hired, in terms of number and qualifications.
- d) Hire the staff required by the Organisation, and present nominations to the Governing Body for the technical, operational, and administrative Directors, in order to hire them.
- e) Submit the draft modifications to the bylaws and Internal Regulations of the Organisation.
- f) Forecast the rates and fees to be collected by the Organisation.
- g) Prepare the annual budget and give advise to the Governing Body on that matter.
- h) Act as Secretary to the Governing Body.
- i) Perform any other task assigned by the Governing Body.

### **Article 11 – Decision-making modalities**

Each Contracting Party is entitled to one vote in the Governing Body through its representative.

Governing Body meetings will require a quorum of two thirds of its members.

Decisions will be adopted by a majority of two thirds of the members present, except for those cases expressly defined in the Bylaws that require a unanimous decision, and will be binding for each State or Contracting Party.

### **Article 12 – Personnel**

The Organisation will hire individuals who are citizens of the Contracting States, except under duly justified exceptional circumstances or situations.

The personnel will be subject to their own labour regime, and, to that end, the respective bylaws will be drafted and approved, based on those of the United Nations Organization.

### **Article 13 – Financial regime**

For the establishment and initial operation of the Organisation, ICAO could provide assistance through a Technical Cooperation Project to be funded by the States.

Following this initial stage, the Organisation should try to achieve financial balance by charging and recovering costs, based on the first budget approved and in keeping with article 15 of the Convention on International Civil Aviation (Chicago 1944).

### **Article 14 - Duration**

This agreement shall remain on force for ... years, and may be automatically and successively extended for ... years (or an equal period).

### **Article 15 – Headquarters**

The headquarters of the Organisation will be in a city to be determined in a Party State, according to the advantages offered for its establishment. The respective Headquarters Agreement will be signed with said State.

### **Article 16 – Audits**

The Organisation shall be subject to internal, external, and ICAO audits, as defined in the respective bylaws.

### **Article 17 – Tax and customs exemptions**

Within the territory of each Contracting Party, the Organisation, its equity, income, acts, and contracts will be exempt from taxes, fees, contributions and/or any other lien, as well as from any restriction or prohibition derived from the import and export of that required for its operations.

### **Article 18 – Privileges and immunities**

Within the territory of the Contracting Parties, the Organisation and each of its internal bodies will have the legal capacity required to perform its duties, and the facilities, privileges, and immunities necessary to meet its objectives, as long as they are consistent with the constitution, the international law, and the laws of the particular State.

Its representatives and officials will also have the privileges and immunities necessary to carry out the duties derived from this agreement in an independent manner.

Goods and salaries are protected from any legal procedure, unless a waiver is expressly provided regarding such protection. Nevertheless, such waiver will not apply to any court judgment.

#### **Article 19 – Infringements**

The Organisation will report to the competent national authorities any alleged infringement to air navigation standards that has occurred within its jurisdiction, and will send the background information evidencing the perpetration or omission that constitutes the breach so that the corresponding measures may be taken.

#### **Article 20 – Dispute resolution**

Any conflict or dispute arising from the interpretation or application of this agreement will be submitted to the Governing Body for its resolution. The Party States agree to accept the final decision of the Governing Body.

#### **Article 21 – Signature and ratification**

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

Before its effective date, this agreement will be available for signing by any other interested State that is admitted by unanimous decision of the other signatory States.

ICAO will inform the Governments of the other signatory States of any other signature or deposit of a ratification instrument.

#### **Article 22 – Entry into force**

This agreement shall enter into force sixty days after at least..... Contracting States have deposited their ratification instruments, to which end ICAO will advise of this date to each of the respective Governments.

For each State that deposits its ratification instrument after the effective date of this agreement, this agreement will enter into force sixty days after said ratification instrument has been deposited.

#### **Article 23 – Registration**

This agreement will be registered with the International Civil Aviation Organization (ICAO), according to the terms set forth in article 83 of the Convention on International Civil Aviation (Chicago, 1944).

#### **Article 24 – Accession**

Non-signatory States may adhere to this agreement once it has entered into force, by submitting an accession instrument to ICAO.

Before a State adheres to the agreement, the unanimous approval by the Contracting Parties will be required, and the State and the Organisation will enter into an agreement addressing the technical, operational, financial and administrative matters concerning its admission.

Accession shall become effective ... (days, month or months) after the respective instrument has been deposited.

#### **Article 25 – Amendments**

Any Contracting Party may propose amendments to this agreement. These will be submitted to the Governing Body, and approved unanimously by the Contracting Parties.

#### **Article 26 – Termination**

Contracting Parties may terminate this agreement after... years have lapsed since its entry into force through a notice to ICAO. In turn, ICAO shall advise the other Contracting Parties of this event.

The termination of the agreement shall become effective ... (at least one year) after the last Contracting Party has received the respective notice.

#### **Article 27 – Dissolution**

The Organisation may be dissolved by unanimous decision of the Governing Body and will continue to exist until its final settlement. An agreement must be reached with regard to the distribution and transfer of the goods among the Contracting Parties, and the continued provision of CNS/ATM and safety oversight services.

#### **Article 28 – Transitory provisions**

During its initial phase, the Organisation will operate based on the assistance provided by ICAO through a Technical Cooperation Project, until such time when its operations are consolidated.

The Technical Cooperation Project will last a period of five years, and it may be extended for an equal period of time. During this time, the Governing Body will establish the financial regime of the Organisation, by raising resources of its own in order to achieve a financial balance.

## APPENDIX E

### DRAFT BYLAWS OF THE REGIONAL MULTINATIONAL ORGANISATION (RMO)

#### I.- General provisions

##### Definitions:

For the purposes of these bylaws, the following terms and expressions will have the following meaning:

- Organisation (insert the name given to the RMO and the abbreviated designation or acronym, if any).
- Agreement: The multilateral treaty or constituent agreement of... (insert the name of the RMO), signed by the States on ..., in the city of..., Republic of... and ratified by the Contracting Parties.
- Contracting Parties: Are the founding member States that ratified the agreement and the States that adhered to it.
- Representative or delegate: The regular representative--and the alternate--of each Contracting Party to the Agreement before the Governing Body, appointed by each one of such Contracting Parties.
- Bylaws or general bylaws: Is the set of legal norms or provisions that govern the relationship between the government and RMO operations.
- Personnel bylaws: Is the set of legal norms or provisions that govern the relationship between the RMO and its personnel.
- Internal regulation/s: Is the set of provisions that govern the operation of the RMO on technical, operational, financial, managerial and auditing matters.
- Governing body: Is the plenary body of highest rank in the RMO.
- President: The person leading the Governing Body.
- Executive Director: The international official or agent that leads, enforces legal provisions, and represents the RMO.
- Offices: The units that will be in charge of the technical, operational and administrative management of the RMO.
- Auditor/s and audit/s: The officials and/or agents in charge of the technical, operational, financial and administrative supervision or control of the RMO through the procedures set forth in the bylaws, internal regulations, Governing Body decisions, and by the International Civil Aviation Organisation (ICAO).
- Headquarters: (Insert the place where the RMO will be established or leave as follows) The domicile of the RMO, or the place that may be established as such in the future.
- Qualified majority: The favourable vote of two thirds of the Contracting Parties in the Governing Body.
- Unanimity: The favourable vote of all the Contracting Parties in the Governing Body.
- Currency: The value symbol in which the budget will be prepared and which allows for exercising the rights and fulfil the obligations of the RMO (define: it could be US dollar).

- Dissolution: Legal act whereby the extinction or termination of the RMO is decided.
- Liquidation/settlement: The set of operations carried out in order to determine what corresponds to each of the stakeholders in the assets and liabilities of RMO equity.

### **Article 1 – Applicable legal regime or law**

The legislation that will govern the RMO is:

- a) The constituent agreement, which constitutes international law, and ranks above the national laws of member States
- b) The bylaws
- c) The internal regulations
- d) International law regulations and the laws of Contracting States, as applicable

### **Article 2 – Legal status**

... (name of the RMO) is a Regional Multinational Integration Organisation, with legal status and capacity, even to litigate, and which has its own equity.

Within the territory of each one of the contracting parties, the RMO will be entitled to the privileges, immunities and exemptions required for the fulfilment of its functions and in keeping with its international legal status.

### **Article 3 – Members**

The original or founding States that have ratified the constituent agreement, and the States that adhere to it, will be members of the RMO, as established in said agreement.

### **Article 4 – Purpose**

In those areas of its competence, the purpose of the RMO, in the initial stage, is to provide and manage the following public services:

- Aeronautical telecommunications
- Aeronautical information
- Air traffic flow management (ATFM)
- Assistance for safety oversight
- Any other activity related to and compatible with the cited services

### **Article 5 – Functions and powers**

In order to meet its objective, the RMO will have the following functions and powers:

- To exercise exclusive rights regarding the provision, establishment, reception and management of the services cited in the previous article.

- To provide the public services stated in the previous article, as foreseen in the ICAO Regional Plan, in the territory of the Contracting Parties and in other areas under its responsibility pursuant to Regional Air Navigation Agreements and in any others assigned to it pursuant to bilateral or multilateral agreements.
- To provide other States with the public services stated in the previous article, as foreseen in the ICAO Regional Plan, in those areas assigned to it pursuant to bilateral or multilateral agreements.
- To provide the public services stated in the previous article and not foreseen in the CAR/SAM Regional Air Navigation Plan, in the territory of the contracting Parties and in other areas assigned to it, pursuant to bilateral or multilateral agreements.
- To provide the public services foreseen in the ICAO Regional Air Navigation Plan other than those stated in the previous article, subject to the prior consent of the Contracting Parties.
- To advise, facilitate and provide assistance to the contracting parties for the effective fulfilment of their safety oversight responsibilities.
- To study and propose to the Contracting Parties the standardisation of national rules, regulations and procedures concerning air navigation and safety oversight services, pursuant to the standards and recommended practices of the Annexes to the Convention on International Civil Aviation (Chicago, 1944).
- To propose to the Contracting Parties, if necessary, relevant modifications to the ICAO Regional Air Navigation Plan.
- To conduct the necessary technical, operational and administrative studies, and decide over, and take, the corresponding action to achieve its objective, taking into account the compliance of the standards of the Convention on International Civil Aviation (Chicago, 1944) and its respective Annexes.
- To establish and apply an economic policy that will allow for a financial balance, by raising resources of its own.
- To obtain loans in the financial markets, which could be guaranteed by the Contracting Parties or others, as necessary.
- To hire individuals who have the citizenship of the contracting states, except in duly justified circumstances or situations, to be decided on a case-by-case basis.
- To properly train personnel on an ongoing basis.
- To require from, and to communicate to, the competent national authorities all the relevant information and report any alleged infringement to air navigation regulations occurred within its assigned jurisdiction.
- To establish, together with the States and International Organisations, the necessary links to perform its functions.
- To facilitate the consultation and participation of service users on technical and rate-related matters.
- To study, advice, recommend, facilitate, decide over, and implement all those matters related to the normal and ordinary operation of the Organisation.
- To develop any other activity related to its purpose and which falls within its legal capacity.

## **II.- Financial aspects**

### **Article 6 – Equity**

The equity of RMO is composed of:

- real estate
- movables
- facilities and equipment that have been assigned to it
- real, personal, and equity rights
- loans
- payments and contributions by Contracting Parties and other persons or organisations
- payments for services rendered
- any other good that is subsequently included

### **Article 7 – Rates**

Setting rates: Rates will be set taking into account the principles set forth in article 15 of the Convention on International Civil Aviation (Chicago 1944) and the following costs:

- those incurred by Contracting States on account of air navigation facilities and safety oversight
- those related to the operation of RMO systems
- those related to the management of RMO systems

Origin: Own resources could come mainly from the rates to be owed by the individuals or corporations operating aircraft at the time of the flight.

If the identity of the operator is unknown, it will be assumed that the owner of the aircraft is the operator until such time when the operator is identified.

Execution: If the debtor has not paid the sum owed, it may be collected through an administrative or court proceeding.

This execution procedure will be filed within the jurisdiction of the Contracting State where:

- the debtor has its domicile or main office
- the debtor has a commercial establishment, if its domicile or main office is not located in the territory of a Contracting State
- the debtor holds property, in the absence of the two previous assumptions
- the RMO has its headquarters, in the absence of the three previous assumptions

The RMO has the capacity to take action with the relevant authorities of the States that are not parties to the Agreement.

The relevant authorities of the Contracting States will cooperate with the RMO in collecting the rates.

### **III.- Internal organisational structure**

#### **Article 8 – Governing body**

##### Type of organisation and integration:

The Governing body is the highest-ranking body; it makes decisions and is made up by a representative or delegate of each State or Contracting Party, who shall have an alternate who shall replace him/her in case of his/her absence. They will both be appointed by the Contracting Party and they shall both be proficient in aeronautical issues.

Tenure: The delegate--regular and alternate--who represents each Contracting Party will remain in office during the entire time of his/her appointment. The instrument of appointment will be deposited before the Secretary of the RMO, which will in turn present it to the Governing Body.

##### Functions:

The Governing Body will have the following functions:

- Adopt a common hiring policy and procedures regarding the operation and management of multinational systems
- Agree to provide public air navigation services not foreseen in the CAR/SAM Regional Air Navigation Plan.
- Approve the technical, operational, and administrative organisation of the RMO.
- Approve the bylaws and Internal Regulations of the Organisation and their respective modifications.
- Set the fee or distribution formula for Contracting Parties, in order to determine their annual payment or contribution for the funding of the RMO.
- Establish the principles that shall govern costing for setting rates.
- Approve the cost recovery percentage and the formula to estimate rates.
- Determine the units to express rates.
- Approve the rates and charges to be paid by service users.
- Establish the period of application and payment conditions for rates.
- Approve the annual budget and its modifications, if any, before (set date) of the year immediately prior to its application.
- Set and/or change RMO headquarters, and sign the Headquarters Agreement with the State in whose territory it will be established.
- Approve the hiring of liability insurances to cover risks derived from the operation of facilities and *vis-à-vis* third parties.

- Create, modify, merge, or eliminate technical, operational, and administrative offices.
- Designate, dismiss, and penalise the Executive Director, in connection to matters related to his/her administration and responsibilities.
- Authorise, on a case-by-case basis, the hiring of individuals who are not citizens of the Contracting States under duly justified exceptional circumstances or situations.
- Approve the hiring of external audits (or authorise the performance of external audits).
- Decide upon or resolve conflicts and disputes that may arise among the Contracting Parties in connection with the interpretation or enforcement of the constituent agreement.
- Accept or admit a new State to the RMO, before and after the entry into force of the constituent agreement.
- Review all amendments or modifications to the constituent agreement before submitting them for the final approval by the Contracting Parties.
- Decide upon the dissolution of the RMO and the conditions under which it shall be carried out.
- Carry out any other activity in accordance with the constituent agreement, bylaws and internal regulations.

#### Meetings or sessions:

It will hold regular annual meetings or sessions and all the extraordinary meetings that are necessary for the discussion and resolution of concrete and urgent problems or topics. Minutes will be taken for each meeting or session.

The Governing Body will set the date and time for the meetings and the Secretary will call the meetings through a notification at least 60 days before the meeting is to take place, except in the case of an extraordinary meeting, where this term can be shortened.

#### Vote, quorum, and decisions

Each Contracting Party shall be entitled to one vote through its representative.

Governing body meetings will require a quorum of two thirds of its members.

Decisions will be binding for Contracting Parties and will be adopted by a majority of favourable votes from the two thirds attending the meeting.

A unanimous decision is required only in the following cases:

- to agree on the provision of public air navigation services not foreseen in the CAR/SAM Regional Plan.
- set or change the quota of Contracting Parties in order to determine their contribution to finance the RMO.
- approve the bylaws and Internal Regulations
- accept or admit a new State after the agreement has been signed, and before and after its effective date.
- approve all proposed amendments or modifications to the constituent agreement.

- decide upon the dissolution of the RMO and the conditions under which this will be carried out.
- obtain loans in the financial markets.

Chair:

The Governing body will be presided over, or will have, a President, who will be elected among its members on a rotational basis, and will remain in office for.... (at least one year) year/s. The chair will be held successively and in alphabetical order by each of the member States.

In the absence of the President, the Governing body will be chaired by the Vice President, and in the absence of the latter, a person will be elected among its members to chair that meeting.

Functions of the President:

The President will have the following functions:

- Monitor compliance with the constituent agreement, the bylaws, the internal Regulations and the decisions of the Governing body.
- Issue general directives for the fulfilment of the functions of the Governing Body.
- Preside over, and suspend, with proper justification, Governing body meetings.
- Carry out any other activity assigned to it by the constituent agreement, its bylaws or internal Regulations.

Secretary:

The Executive Director will act as Secretary of the Governing Body.

**Article 9 –Executive director**

Type of body and representation:

The Executive Director is the executive manager and representative of the RMO.

Designation:

The Executive Director will be elected through public contest and will be appointed by the Governing Body, reporting directly to this body.

Requirements:

In order to become Executive Director, the individual must meet the following requirements:

- to be a citizen of any of the Contracting Parties
- to be at least.... years old and maximum .... years old
- to hold a university degree in ....., with a major in .... (or preferably with a major in ...)
- to have.... years of experience (or broad or considerable experience), having held high ranking or managerial positions within its area of expertise and in international civil aviation (or in international civil aviation administration and management)

- proficiency in Spanish and English, written and spoken, would be desirable
- broad knowledge of air navigation and safety oversight services
- demonstrate qualifications and the highest degree of efficiency, professional competence, and integrity to carry out duties
- ability to hold personal interviews
- initiative, mature judgment, and tact to maintain harmonious relationships at work and with civil aviation administrations

Tenure of position:

The Executive Director will stay in office for ... (could be a minimum of 4 or 5) years and can be re-elected for the position.

In case of absence, incapacity, resignation or dismissal, the director (or manager) in charge of... (determine the office or unit that will replace him/her) will temporarily and transitorily perform the functions of the Executive Director,

Functions:

The Executive Director will have the following functions:

- Represent the RMO, even in and out of court
- Sign all the documents necessary for the regular (or normal) management and operation of the RMO, within its scope of competence
- Manage, enforce, and monitor the implementation of the systems under the responsibility of the RMO
- Report regularly to the Governing body on the operation of the systems under the responsibility of the RMO
- Forecast rates and fees to be collected by the RMO
- Adopt the necessary measures to ensure the collection of rates
- Prepare the draft annual budget before (specify date) of the year immediately prior to its application, submit it to, and advise the Governing body on the issue.
- Forecast (or propose draft) bylaws and internal Regulations and their possible modifications, at the request of the Governing body
- Act or perform as Secretary to the Governing body.
- Propose to the Governing body the designation of operational, technical, and administrative Directors (or Managers); and the hiring of external audits (or for the last part: authorise the performance of external audits, prior approval by the Governing body).
- Set the policy for the personnel to be hired, in terms of number and qualifications.
- Hire, penalise, and dismiss the technical, operational and administrative personnel required by the RMO, except Directors (or Managers) and internal auditors. They shall be citizens of a Contracting State

- Hire liability insurances to cover the risks derived from the operation of facilities, and *vis-à-vis* third parties, with companies considered to be appropriate
- Submit the reports required by the Governing body as soon as possible
- Perform any other task entrusted to it by the Governing body.

#### **Article 10 – Offices**

RMO will have the following technical, operational, and administrative offices: .....

The Organisation could have one Station Office (or Agency) (or give it a different name) in the territory of the Contracting parties, in keeping with the characteristics set forth in the respective Regulations.

#### **IV.- Final provisions**

#### **Article 11 – Audits**

The RMO will be subject to the following audits:

a) internal audit, which comprises:

- administrative and financial aspects, in order to review the accounts, regularity and good financial management of income and expenditures of the RMO
- technical and operational aspects, in order to perform quality control and ensure an effective provision of safety-related services

b) annual external audit, to be performed by someone proposed by the Executive Director and approved by the Governing body

c) security and safety audits, as foreseen by ICAO

#### **Article 12 – Language**

The official language of the RMO will be Spanish, notwithstanding the use of both Spanish and English in air navigation operations.

#### **Article 13 – Publications**

The RMO will publish manuals, guidelines, circular letters, bulletins, directives, and all other documentation it may deem necessary and convenient for its operation.

#### **Article 14 – Dispute resolution**

The conflicts or disputes arising among the Contracting Parties in connection with the interpretation or enforcement of this constituent agreement, and the statutory and regulatory norms, will be submitted to the Governing body for their resolution. The participating States undertake to accept the final decision of the Governing body. The Parties involved in the dispute may not vote.

### **Article 15 – Dissolution and settlement**

In case of dissolution and settlement of the RMO, the following issues will also be resolved:

- a) continued provision of CNS/ATM and safety oversight services;
- b) situation of the Contracting Parties;
- c) situation of RMO officials, agents, and personnel;
- d) the distribution and assignment of the functions, rights, obligations, and equity of the RMO to a new Organisation or to the Contracting Parties, including financial compensation to Contracting States, including financial compensation to member States in proportion to their contributions.

### **Article 16 – Entry into force**

These bylaws will become effective on (or ... days) after its approval by the Governing Body.

### **V.- Transitory provisions**

If any.

This section could deal with:

- 1) the drafting and approval of the various internal regulations within a given period of time, as of the approval of this Bylaw
- 2) initial budget and effectiveness

**APPENDIX F****PROPOSAL OF POSSIBLE OBJECTIVES OF THE REGIONAL TECHNICAL COOPERATION PROJECT THAT COULD SUPPORT THE IMPLEMENTATION OF AN RMO**

1. Establish the necessary studies for the implementation of an RMO as an international organisation responsible with managing multinational facilities and, if possible, providing air navigation services in the long term.
2. Within the scope of the new regional project, establish and conduct the necessary studies for the consolidation of already implemented multinational facilities as part of the RMO.
3. Within the scope of the new project, and in coordination with other technical cooperation projects, establish the necessary studies for the implementation of new systems, such as ATFM and others.
4. Throughout the life of the new project, manage the implementation of the RMO, developing and implementing plans for the transition period to an international/multinational body, and analysing all the technical, operational, administrative, institutional, legal, financial, and economic aspects related to the implementation of the RMO.
5. For the personnel of the RMO and the States/Territories/International Organisations that participate in it, develop plans concerning human resources and training in all the areas required, and begin their implementation as necessary.
6. Throughout the life of the project, implement, as necessary, new multinational systems/facilities to achieve ATM improvements based on performance objectives, attainable benefits and business case study results.
7. Conduct a business case analysis to be submitted to the civil aviation authorities, showing the advantages/disadvantages of implementing an RMO.

**APPENDIX G****IMPLEMENTATION OF A COST RECOVERY ARRANGEMENT FOR THE RMA: A STEP-BY-STEP PROCEDURE**

Based on ICAO guidelines for the establishment of a multinational air navigation facility, the implementation of an RMA and the corresponding cost recovery arrangement could include the following steps:

- a) define, at a PIRG meeting, the RVSM monitoring function as an ICAO multinational air navigation facility, in keeping with the guidelines for the establishment and provision of ICAO multinational air navigation facilities, contained in the corresponding regional air navigation plan;
- b) adopt a cost sharing arrangement based, for instance, on the distance flown or the number of flights within the airspace under the responsibility of each of the respective States, understanding that the distance flown may offer more precision, while the number of flights is easier to manage;
- c) find and designate a State or existing organisation or agency to establish and operate the RMA (responsible party: PIRG);
- d) draft and establish an administrative agreement to regulate the establishment and operation of the RMA, including the cost sharing arrangement and the procedures for the collection of contributions from the participating States (the PIRG, supported by the ICAO Regional Office);
- e) sign the administrative agreement (the DGCA or other authorized person in the participating States);
- f) establish and operate the RMA as an ICAO multinational air navigation facility, in keeping with the administrative agreement (the assigned operator);
- g) recover the contributions for funding the RMA, by adding to the cost base of route charges, and transfer the amounts to the RMA operator (each State).

**APPENDIX H****INSTITUTIONAL ASPECTS TASK FORCE****1. Terms of reference**

- a) Based on the new ATM operational concept approved by the Eleventh Air Navigation Conference as the global framework for the implementation of ATM systems, study the action taken by the ICAO Council and by some States regarding the institutional aspects for the implementation of the aforementioned systems in the CAR/SAM Regions.
- b) Taking into account the performance objectives for the ATM improvements identified in the CAR/SAM Regions in keeping with the Global Plan, suggest measures to assist the States that so require in the conduction of cost-benefit analyses and economic, financial, legal, and administrative studies concerning technical and operational projects for the implementation of CNS/ATM systems.
- c) Analyse, as necessary, those aspects of the CAR/SAM Regional Air Navigation Plan that might require multinational arrangements.

**2. Work programme**

TASK NUMBER	TASK DESCRIPTION	PRIORITY	DATE	
			START	COMPLETION
<b>TF-IA/1</b>	Taking into account the new ATM operational concept as well as the performance objectives for the ATM improvements identified in the CAR/SAM Regions in keeping with the Global Plan, develop proposals for the CAR/SAM Regions, based on the global action taken by the ICAO Council and some States on institutional aspects.	B	As of the new edition of the CNS/ATM global plan	
<b>TF-IA/2</b>	Taking into account the performance objectives for the ATM improvements identified in the CAR/SAM Regions and the Global Plan, develop guidance material to assist CAR/SAM States in the conduction of cost-benefit analyses for the institutional arrangements of the multinational facilities identified.	A		2008
<b>TF-IA/3</b>	Develop proposals for the coordination of financial, administrative, and other relevant arrangements for the implementation of multinational ATM systems.	A	Follow up on the application of the Constituent Agreement for the implementation of an RMO	

TASK NUMBER	TASK DESCRIPTION	PRIORITY	DATE	
			START	COMPLETION
<b>TF-IA/4</b>	Determine the elements that require legal arrangements on the institutional aspects identified in the previous item, and provide guidance to facilitate their implementation.	A		2008
<b>TF-IA/5</b>	Based on the available material, develop a strategy for the implementation of multinational facilities.	A	2006	2008
<b>TF-IA/6</b>	Study the most appropriate way of reflecting multinational facilities in the FASID, in order to facilitate the identification, description, and processing of future amendments.	B		2008

3. **Composition**

Argentina, Brazil, Chile, Colombia, Cuba, Peru, United States, Venezuela and COCESNA.

4. **Rapporteur**

Argentina