THE CENTRAL AMERICAN AIR NAVIGATION SERVICES CORPORATION

(COCESNA)

by

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A mi esposa
e hijos

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ABSTRACT

This thesis analyzes in detail all aspects of the Central American Air Navigation Services Corporation (COCESNA), such as the legal status and important matters of the Constitutional Charter; the structure, financing, powers and relations of the Corporation. The analysis takes into consideration the public international and the national law of the member States. Also, the exclusive rights of the Corporation to provide its services and the problems faced in its activities are dealt with.

The analysis is complemented by a study of the Air Navigation Security Agency for Africa and Madagascar (Asecna) and the European Organization for the Safety of Air Navigation (Eurocontrol), which are the counterparts of COCESNA in Africa and in Europe respectively.

The differences and analogies between COCESNA, Asecna and Eurocontrol are also analyzed in order to obtain a better overall view of the three organizations, with special emphasis on the management, functions and financing. To conclude, two matters of interest to international aviation are presented briefly: the laws and regulations applied by COCESNA, Asecna and Eurocontrol in providing air traffic services and the liability of these three bodies in relation to the users of the services.

The English text of the Constitutional Charter and the Statutes of COCESNA, as contained in this thesis, is taken from a translation made by the Regional Office of Central America and Panama (ROCAP) of the original and authentic Spanish text. The translation was published under the responsibility of the Secretariat of ICAO.

RESUME

Cette thèse est consacrée a une étude detaillée de la Corporation de Services de Navigation Aérienne d'Amérique Centrale (COCESNA). Elle traite du statut juridique et des importantes dispositions de sa Charte Constitutionnelle; sa structure, son financement ainsi que de ses pouvoirs et de ses relations. Tant le droit international public que les systèmes juridiques de chaque Etat membre sont pris en considération. Les droits exclusifs de la Corporation d'assurer ses services ainsi que les problèmes qu'elle encourt sont aussi examinés.

A cette analyse s'ajoute une étude de l'Agence pour La Sécurité de La Navigation Aérienne en Afrique et à Madagascar (ASECNA), et de l'Organisation Européenne pour La Securité de La Navigation Aérienne (EUROCONTROL), contre-parties de la COCESNA pour l'Afrique et l'Europe respectivement.

Une comparaison des trois organismes, mettant en relief leur système de gestion leurs fonctions et leur financement est destinée a clarifier leur rôle. En conclusion, deux sujets d'intérêt sont présentés brièvement: les lois et réglements appliqués par la COCESNA, Asecna et Eurocontrol, dans l'assistance au trafic aérien et la responsabilité de ces trois organismes vis à vis des usagers.

La version anglaise de la Charte Constitutionelle et des

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Abbreviations used

AFTN	Aeronautical fixed telecommunications network.
AIS	Aeronautical information service.
ATC	Air traffic control.
ATS	Air traffic services
FL	Flight level.
GNP	Gross national product.
HF	High frequency.
IPC	International public corporation.
IOA	International operating agency.
ICAO	International Civil Aviation Organization.
MET	Meteorological or meteorology.
SAR	Search and Rescue.
UHF	Ultra high frequency.
VHF	Very high frequency.
VOR	Very high frequency omnidirectional range.

INTRODUCTION

The Convention which created "THE CENTRAL AMERICAN AIR NAVIGATION SERVICES CORPORATION" (COCESNA),(1) was signed by the five Central American Republics, Guatemala, Honduras, El Salvador, Nicaragua and Costa Rica, on February 26, 1960, at Tegucigalpa, Honduras. The idea was conceived by the Central Americans themselves and they are mainly responsible for making it a reality. The initial project for the creation of a regional organization to increase the reliability of air traffic services in Central America started in 1958, after several years of frustrated efforts by each of the countries working independently towards the same goal. The Director of Civil Aviation of Honduras, with the technical assistance of the Regional Office of ICAO in Mexico, presented the blue-print for the plan to a Conference of Directors of Civil Aviation of the five mentioned Central American Republics, held in Guatemala on November 4th and 5th, 1959, which recommended, among other things, the calling of a Diplomatic Conference to draft an international convention for the creation of a Corporation to provide air traffic services in Central America.

The Government of Honduras made the arrangements for that Conference to be held at Tegucigalpa, beginning on February 22, 1960. The Convention was signed and it came into force in

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1. COCESNA is the abbreviation of the Spanish name of the Corporation which is Corporacion Centroamericana de Servicios de Navegacion Aérea.

December 1961. The Congresses of all the five countries ratified the Convention without delay and the documents of ratification were deposited with ICAO.

The objective of the Corporation is as follows: "The safety of human life in the airspace overlaying their region through the provision of efficient air navigation facilities and aeronautical telecommunications".[2]

There are two other international organizations similar to COCESNA, one in Europe[3] and the other in Africa.[4] All three organizations were formed to assure the safety of air traffic control services. The legal status of COCESNA, as defined by the Convention, is a recent development in international law.

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2. Mr. Lisandro Rosales Abella, General Manager of COCESNA defined the objectives of the Corporation in a report given to the Latin American Economic Commission.

3. Eurocontrol: "European Organization for the safety of Air Navigation", established by the International Convention relating to Co-operation for the Safety of Air Navigation, signed at Brussels, on December 13, 1960, by the Federal Republic of Germany, the Kingdom of Belgium, the French Republic, the United Kingdom, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands, Text of the Convention in Yearbook of Air and Space Law, 1965, p.156-176.

4. Asecna: "The Air Navigation Security Agency for Africa and Madagascar", which was established by the Saint Louis du Sénégal Convention on December 12, 1959, signed by Cameroon, Chad, Peoples' Republic of Congo, Ivory Coast, Dahomey, Upper Volta, Mauritania, Niger, Senegal, Central African Republic, Gabonese Republic, and Malagasy Republic, it was later joined by Mali and Togo, Text in Yearbook of Air and Space Law, 1965, p.116-130.

By virtue of its organization, constitution, powers, operation and external relations, COCESNA is a non-profit public international utility corporation falling within the new legal order constituted by those organizations.[5] Far from being a mere instrument of co-operation between States, the Corporation operates for the direct benefit of the users of air space. Unlike international treaties of a "legislative" nature, whose main object is to promote the establishment of international standards, the type to which the COCESNA Convention belongs is rather political in nature and reflects the existence of a special community of interest represented by a joint venture.

The COCESNA Convention is one of the latest in a series of aspirations and attempts at institutionalised collaboration among the Central American States in order to re-establish the union they knew as Spanish Colonies and for over a decade after independence was achieved, early in the nineteenth century. The insuperable economic and security problems of small and poor States, with a common European origin, a common language and common historical experiences have been outweighed by geographical barriers to widespread movements, occasional conspicuous differences in political orientation, differences in economics and living standards. Up to now the Organization has been working with no major difficulties, even though the member States have been

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5. H.T. Adams, Etablissements Publics Internationaux. In the French Administrative Law these enterprises are called "Etablissements Publics",p.1 .

involved in various types of incidents, such as exchanging of diplomatic notes of protest and armed conflicts between border States. Nevertheless, the spirit of mutual co-operation has been outstanding and will continue that way in the years to come.

The practical reason for the creation of the Corporation is mostly the technological lag between the existing air traffic control systems and new civil aviation requirements; another reason is economics. In order that the Central American countries could provide, in an independent way, the air traffic services which they have undertaken as parties to the Convention on International Civil Aviation,(6) they would require the investment of larger amounts of capital than if they act in a co-operative way. The services provided in this manner will be much more efficient and safer.

Article 34 of the Convention states that any State which is not a signatory to it, can at any time after the Convention comes into force become a party; the adhesion of any particular country is subject to the unanimous approval of the member States and to a previous financial agreement between this country and the Corporation. Because the Convention is of a "regional type" specially conceived for the Central American States, which are neighbouring, it has been difficult for other countries to become

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6. Articles 12-28 and 37 of the Convention on International Civil Aviation, ICAO DOC. 7300/3, hereinafter called Chicago Convention.

parties to it. The countries most likely to become party to the Convention are Panama, British Honduras (Belize) and perhaps some other country in the Caribbean. Panama would be the country most interested in becoming a party. Even though historically and geographically Panama is a part of South America, physically it forms part of the Central American Isthmus and maintains good relationships with the Central American States rather than with those in South America. Actually COCESNA has a contract with Panama by which it provides air traffic services to the latter.

British Honduras (Belize) is another country likely to become party to the Convention but its actual status of dependent territory of the United Kingdom would make it difficult for it to join COCESNA. Nevertheless, British Honduras (Belize) receives from COCESNA air traffic services by a contractual agreement.

Some countries in the Caribbean are also likely to avail themselves of the services of the Corporation, but it would depend mostly on their geographic situation in relation to Central America.

CHAPTER I

NATURE OF COCESNA

Section I

1. Legal Status of the Constitutional Charter [1]

The legal instruments of COCESNA are the Constitutional Charter which contains 34 articles, the Statutes and the Internal Regulations of the Board of Directors. The Statutes were not drafted at the same time as the Constitutional Charter, but by the Board of Directors of the Corporation and subject to the approval of all contracting States.[7] Any other regulation necessary for the functioning of the Corporation shall be established by the Board of Directors at its meetings.[8]

There are two aspects which are considered of importance with respect to the legal status of any treaty: the capacity of Member States to conclude them and the formality of the process of ratification. To conclude a treaty, States should be independent countries capable of self government.[9] At the

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7. Article 26 COCESNA Convention.

8. Article 4 COCESNA Convention.

9. Article 6 Vienna Convention on the Law of Treaties, Text in T.O. Elias, The Modern Law of Treaties, p. 227.

time the Convention was signed, the member States of COCESNA fulfilled these requirements. The other aspect is the formality of ratification. The consent of a State to be bound by a treaty is expressed by ratification. In the course of the 19th century ratification was an essentially formal and limited act by which, after a treaty had been drawn up, the sovereign confirmed or finally verified the full powers previously issued to his representatives to negotiate the treaty. The treaty was not viable at the moment of signing, and its effectiveness delayed until the confirmation by the sovereign of his representatives' full powers. If they had been in order, there was an obligation on the part of the sovereign to ratify his representatives' full powers.(10)

The actual doctrine suffered fundamental changes and it established that the treaty itself is subject to ratification before it becomes binding. The COCESNA Convention contains a clause which states that the Convention must be ratified and will be binding when the fourth member State ratifies the Convention.(11)

2. Important Aspects of the Constitutional Charter

COCESNA is an example of what regional co-operation between States can accomplish. The Central American Countries, at the moment of signing the Convention, gave up part of their

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10. T.O. Elias, op. cit., p. 24

11. Article 32 COCESNA Convention

sovereign rights to the Corporation to be administered in their common interest. These States decided that the Corporation would provide air traffic services over their respective territories. They considered that these services could be better provided in a co-operative way by a non-profit public international utility corporation.

a) <u>Controversies</u>: In case of controversies or disputes in relation to the interpretation or the application of the Convention, these will be resolved by a tribunal composed of judges of the Supreme Courts of member States. The national courts are not competent in these cases. The tribunal is formed by a member from each contracting State and its decisions are taken by majority vote.(12) Eurocontrol has a clause similar to that of COCESNA.(13) Asecna does not have a provision for the interpretation or application of the Convention by arbitration.(14)

b) <u>War between Member States</u>: An existing state of war between member States could be a reason for the denunciation of the Convention and, consequently, the termination of the agreement. There have been several armed conflicts and interchanges of diplomatic notes between member States with common borders, but up

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12. Article 25 COCESNA Convention

13. Article 35 Eurocontrol Convention

14. Maurice Tancelin, The Air Navigation Security Agency for Africa and Madagascar, p.14.

to now these incidents have never jeopardized the existence of the agreement. The spirit of co-operation of these countries has to be high in order to cope with problems such as suspension of diplomatic relations between member States. COCESNA has a special provision to solve these particular problems where the phrase "in case of emergency" is used in a generic way.[15] Eurocontrol has a similar disposition in its Convention.[16] Asecna does not have this type of clause or anything similar to it.[17]

c. Reservation: In modern practice, where certain multilateral treaties are concluded by a large number of States with widely divergent political and economic systems, it is the use of reservations which enables States to become parties to such treaties. The right to formulate reservations is nothing but an inalienable one to allow States to regulate their interest. States which are parties to a treaty also have the right to oppose reservations considered incompatible with the treaty.[18] The Genocide case in the International Court of Justice laid down the principle that reservations could be objected to or accepted depending on compatability of the reservations with the

15. Article 30 COCESNA Convention.

16. Article 33 Eurocontrol Convention.

17. Tancelin, op.cit., p.14.

18. T.O. Elias, op.cit., p. 27.

object and purpose of the treaty.[19] Finally Article 19 of the Vienna Convention on the Law of Treaties, says that a State may formulate a reservation unless: (such) reservation is prohibited by the treaty; (or if) the treaty provides that only specified reservations are allowed or where the reservation is incompatible with the object and purpose of the treaty. Neither COCESNA nor Asecna or Eurocontrol have any clause dealing with such reservations. Because the COCESNA Convention was only signed by five States, it was possible for them to discuss and change any clause which could be a motive for reservations. The technical nature of the Convention would not be compatible with the fact of member States making reservations.

3. Consistency of COCESNA with the Convention on International Civil Aviation

The first part of Article 76 of the Vienna Convention on the Law of Treaties literally says:

> "The designation of the depositary of a treaty may be made by the negotiating States, either in the treaty itself or in some other manner. The depositary may be one or more States, an international organization or the chief administrative officer of the organization."

The Article states that the designation of the depositary could be

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19. International Court of Justice, Reports, 1951, p. 15.

in the treaty itself or in some other manner. The depositary is normally appointed or designated either in the treaty itself or by reference to the treaty or to some other document. And the depositary could be any State, organization or institution to which is entrusted the custody, whether temporary or permanent, of the treaty and any auxiliary instrument for certain specified purpose or purposes.[20] In customary international law and in Article 76(1) of the Vienna Convention on the Law of Treaties, I found enough support to say that the depositary could be one or more States, an international organization or the chief administrative officer of such organization.

The member States of COCESNA chose ICAO as the depositary of the Convention, because they all are members of the United Nations and ICAO itself, and also because a great majority of inter-governmental organizations employ the services of international organizations as depositaries.

The agreements between member States of the Chicago Convention must be consistent with the Convention. By virtue of Article 82 of the Chicago Convention member States are bound not to enter into any obligations or understandings inconsistent with its terms. Such an inconsistency can bear on the purposes or the methods of agreement. It would not be difficult to demonstrate that the purpose of COCESNA is consistent with the Chicago rules. For instance, Article 28 of the Chicago Conven-

20. T.O. Elias, op.cit., p. 209.

tion establishes that member States undertake obligations such as providing airports, radio services, meteorological services, and other navigation facilities to facilitate air navigation; adopt and put into operation the appropriate standard systems of communications, codes, markings, etc., collaboration in international measures to secure the publication of aeronautical maps and charts. Also Article 37 states that they shall adopt international standards and procedures to secure the highest practicable degree of uniformity in regulations. These obligations will be more efficiently performed by international organs than by individual States. Here is where COCESNA plays an important role in aiding the contracting States in the fulfillment of their international obligations. In regard to the procedure set out in Article 83 of the Chicago Convention, which states that all arrangements made by any contracting State shall be forthwith registered with the ICAO Council, which shall make them public as soon as possible, COCESNA has a provision to deal with this matter.(21) According to this Article the Convention had to be sent to ICAO, which had to send certified copies to signing States. This Article should be considered the one that regulates the depositary act. Afterwards, when the Convention is already in force, it must be registered with ICAO, which will register it

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21. Article 31 COCESNA Convention.

with the United Nations. Eurocontrol also conforms to the provisions of Article 83 of the Chicago Convention.[22] The Asecna Convention does not contain any such stipulation. That is because of the nature of this Convention, which is not only a treaty of co-operation but also a technical assistance agreement. Consequently it is not consistent with international law in this regard.

22. Article 42 Eurocontrol Convention.

SECTION II

The International Personality of COCESNA

The primary unit of all international politics, international law and organized international co-operation, is the national state.[23] The essential feature of this entity is the element of legal authority which is exercised by the State over its citizens and other persons and things within its domain. It is not really necessary that a State should be a national State in the full sense of the term before it may participate in international organizations. The actual tendency is to identify the state organization with national unity, but the terms "nation" and "state" may be used interchangeably and sometimes it is necessary to distinguish between the two. "The independent nations"[24] as they are called by the World Court, are the normal type of entities which enjoy full personality under international law. The rights and duties of a State are determined by "International Law as it is applied between all nations belonging to the community of States."[25] States are,

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23. Pitman B. Potter, An Introduction to the Study of International Organization, p. 25.

24. Series A, No.10, Judgments of the Permanent Court of International Justice, p.17, Cited by George Schwarzenberger, International Law as applied by International Courts and Tribunals, Vol. 1, p.89.

25. Series A, No.10, Judgments of the Permanent Court of International Justice, p.16, Cited by George Schwarzenberger, op.cit., Vol.1, p.89.

however, equally competent to create new types and different classes of international persons by the exercise and modification of the grant of recognition.[26] When sovereign States agree on the establishment of an international institution they may find it convenient to endow it with an international personality of its own in order to enable it to perform its allocated functions with greater efficiency. Whether they have taken this step is entirely a question of their expressed or implied intentions.[27] If the constitution of an international institution does not expressly state this, then it is necessary to ascertain in some other way the intention of the contracting States. When dealing with international institutions such as the United Nations it is reasonable to believe that such an institution is intended to exercise and enjoy "functions and rights which can only be explained on the basis of the possession of a large measure of international personality and the capacity to operate upon an international plane."[28]

We can say that an international institution "is a state, which it certainly is not, or that its legal personality and rights and duties are the same as those of a state. Still less

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26. George Schwarzenberger, op.cit., Vol.1, p.89.

27. Idem., p. 137.

28. International Court of Justice, Reports, 1949, p. 179.

is it the same thing as saying that it is a super state whatever that expression means. It does not even imply that all its rights and duties must be upon the international plane, any more than all the rights and duties of a State must be upon that plane. What it does mean is that it is a subject of international law and capable of possessing international rights and duties." (29) In principle, non-members are free to acknowledge or to ignore the existence of such institutions; but the International Court of Justice has, however, held that the United Nations may claim international personality with regard even to non-members.

Whether international institutions were subjects of international law has been a question of controversy for some time. It followed, logically, from the basic premises of the classical view of international law that international institutions could not be considered as possessing personality under the system of law. This view was naturally reflected in the literature on international law at a time when the development and expansion of international institutions had as yet made little impact on international law. Parallel to the development of international institutions there has been a discernible trend in international law towards the granting of a limited degree of international personality.(30) As a result of the international personality

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29. International Court of Justice, Reports, 1949, p.179.

30. Max Sørensen, Manual of Public International Law, p. 256.

conferred on it, the COCESNA Corporation is governed by international law, and therefore, has access to international tribunals as well as the power to conclude treaties with other States provided such treaties are not in conflict with its purposes.

SECTION III

COCESNA, a Non-Profit Public International Utility Corporation

The public international corporation is emerging as an important instrument of international legal and economic co-operation. It has proved to be an answer to the need for a flexible organizational form capable of undertaking large trans-national activities of an essentially technical and commercial nature, where public and private domestic enterprises and traditional international organizations were not suitable.

Actual advances in communications and technology have made possible the conclusion of the tremendous projects which could not be accomplished without international co-operation. It is necessary to look for technical and monetary assistance from international sources. Economic considerations may force States to fully utilize the same infrastructures or facilities. I will mention examples of joint facilities where large capital investment is required: airlines; power generating facilities;

interstate modes of transportation, such as rivers, canals and railways.

The public international corporation is modelled upon the system of the private enterprise and domestic public service, looking for a combination of multinational public participation and control with the efficiency, flexibility and in a certain way autonomous decision making capacity of private corporations. Private enterprises have already undertaken transnational operations, which cover regional as well as world-wide operations. Steiner and Cannon in their book "International Corporate Planning", say: "It seems to me no exaggeration to say that the present and prospective development of multinational corporate growth is one of the most powerful forces operating in the world today. These developments are particularly strong in companies in the North Atlantic Community. No valid data exist to measure this growth. But we do know there has been a substantial increase in both the number and size of multinational companies. We are so certain that these trends will continue".(31)

These days it is common to find these corporations in their different forms in various countries to take advantages of more favourable legal climates in the different jurisdictions. There are certain projects which by their nature and scope may require multinational participation for utilities and transport

31. George A. Steiner and Warren M. Cannon, International Corporate Planning, p.2.

facilities; international financing and monetary stabilization development of a region of interest to several States. Territorial considerations may also require joint efforts which are necessary in some cases like those required for the Mosselle: Mekong; Indus and Niger river projects or the Finnish-Russian Canal. A very important case in point is the Basel-Mulhouse Airport which was built to serve Basel-Switzerland, but which could only be built in French territory.

To all these cases we can also add Asecna and Eurocontrol which are the African and European counterparts of COCESNA. When such co-operative efforts were necessary a public international corporation has often been selected as the means of achieving results. The reasons for this choice are generally political, economic and practical ones. It is possible that private enterprises may undertake the project, but occasionally the work does not represent a high enough rate of profitability to attract the private risk capital required. Another factor is that governments consider projects involving their territories, national resources, utilities, or transportation systems too important to delegate to private enterprises. There is a very important feature that distinguishes the public and private corporations from the international organization; this is the management structure which the first two possess.

The international organization has a "Secretariat" type machinery meanwhile the private and public corporations have a more flexible and efficient decision making procedure. The Board of Directors and the General Manager possess a great quantity of power leaving a general assembly of members with powers that are usually assigned to share holders meetings. As we know the Secretariat has little decision making power, which is usually exercised by the assembly. Another characteristic and also an important advantage of the public corporation over the traditional international organization is the existence of independent funds or permanent equity in the form of "corporate capital".

It is not easy to define the international public corporation, because they have been established all over the world and their purposes vary from one country to another. Adam in his "Etablissements Publics Internationaux" gives the definition: "L'établissement public international est une enterprise ou un service créé par deux ou plusiers Etats, indépendamment de toute organisation intergouvermentale, ayant pout object, soit de faire des prestations à des particuliers, soit de réglementer l'usage par ces derniers du domaine public des dits Etats."[32] In this definition we find the following elements: a) an enterprise or a public service, b) of an international nature, c) which is independent from any inter-governmental organization. There are various types of inter-

32. H.T. Adam, op.cit., p. 9.

national public corporations, but only the public international utility corporation will be mentioned because COCESNA falls under such classification.

CHAPTER II

STRUCTURE OF COCESNA

Section I

Organization of Management

Article 4 of the Convention states that the Corporation is administered by a Board of Directors. There is also a General Manager and a Manager of Air Navigation Services in each of the member States. The General Manager is appointed by the Board of Directors.(33) The Managers of Air Navigation Services are appointed by the General Manager.(34)

1. The Board of Directors

All matters in relation to the Board of Directors are regulated by Article 4 of the Convention, Articles 10, 11 and 12 of the Statutes and the Internal Regulations of the Board of Directors. The Board is composed of a representative from each member State. This representative of preference should be a competent authority in aeronautics. The Board of Directors has always been composed of the Directors of Civil Aviation of member States. The presence of all member States is required to constitute a quorum for the meetings of the Board. Some decisions require unanimous approval but the rest only a

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33. Article 14 COCESNA Statutes.

34. Article 15 *Idem*.

majority. The Board shall establish its Internal Regulations and such others as are necessary for the functioning of the Corporation. They are approved under the unanimity rule. As we can see, something crucial like the power to regulate the functioning of the Corporation is given to the Board of Directors. These powers given to the Board of Directors are tremendous if we take into consideration that they may regulate all activities necessary for the functioning of the Corporation. This gives the Corporation the management structure used by the private and public corporations which is not common in international organizations. It allows for a more flexible and efficient executive decision making process than the "secretariat type of machinery". Therefore the Corporation as a consequence of its corporate oriented organization does not have a general assembly as the Board is vested with all significant powers. Each Board member will be elected annually by the contracting parties and will remain in his position until the next annual meeting (following the meeting during which he was elected), which will appoint a successor.[35]

In the absence of the President, the Board will be presided over by the Vice President and in the absence of the latter a substitute will be selected from among those Directors

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35. Article 7 COCESNA Statutes.

present to preside over the meeting.[36] Express provisions in the Statutes grant the Board wide powers of management which are not subject to restrictions. The functions of the Board of Directors are as follows:

They shall determine the policy of the Corporation and its administrations, approve agreements or decisions dealing with relations between member States and international organizations;

Approve tariffs and rates to be paid by users of air space;

Approve the Financial Regulations, the Personnel Service Code, budgets, statements of account, reports, balance sheets and capital investment programs;

Approve the contracting of loans under terms longer than one year or for amounts exceeding U.S. $2,000 and also employees' work contracts in excess of U.S. $5,000.[37]

The Board must present a detailed annual report of activities and the economic status of the Corporation to the contracting States. A very important function of the Board of Directors is the appointing of a Manager for the Corporation. Like in other enterprises he will be the one dealing directly with all the problems and the responsibilities of the proper operation

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36. Article 10 COCESNA Statutes.

37. Article 12 *Idem*.

of the Corporation. As a consequence he has to be carefully selected from candidates with a good background in administration and knowledge of the Central American Aviation Legislation.

2. The President of the Board of Directors

The Board of Directors will annually elect its President from among the members; he can be re-elected.[38] The function of the President of the Board of Directors is to sign all documents in connection with the resolutions of the Board. The Manager also signs them acting as Secretary. The President convokes and presides over meetings of the Board and signs, together with the Manager, the respective minutes. Authority is vested in the President to enforce the execution of all constitutional laws, regulations and provisions of the Board of Directors. As the Board is responsible for the administration of the Corporation he may take the necessary steps to assure the proper administration of the Manager's office and inform the Board of measures adopted.[39]

3. The General Manager

The General Manager, who plays a very important role in the proper functioning of the Corporation, is elected by the Board of Directors. The provision which regulates this election

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38. **Article 10 COCESNA Statutes.**

39. **Article 13 <u>Idem</u>.**

states:

> "The Board of Directors will appoint a Manager for the Corporation and will determine his salary and other working conditions." (40)

This provision does not determine the duration of the period to which the Manager may be appointed. The first Manager of the Corporation was appointed by the Board of Directors for an initial period of five years. The Board has considered appropriate terms of five years for succeeding administrations of the General Manager. The term can be changed by the Board using its discretionary powers. This gives the Board the flexibility which is necessary for the proper administration of the Corporation.

The functions of the General Manager are various and can be divided into three categories:

A) The representation of the Corporation;

B) The administration in general;

C) The drafting of regulations.

In the first category we find that the Manager represents the Corporation judicially, extrajudicially and administratively in all matters and contracts. The second category concerns matters of administration, including the obligation to provide the Board with the necessary information regarding the progress of the Corporation and the operation of different services. It also includes the signing of all forms of business instruments

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40. Article 14 COCESNA Statutes.

and the application of necessary disciplinary measures to employees ensuring their strict compliance with duties and obligations and various types of other obligations regarding the handling of personnel. The final category of the General Manager's functions includes the preparation and drafting of tariffs to be charged to the users of the service, contracts, regulations, commercial transactions, budgets, balance sheets and statements of account.

Two very important regulations had to be drafted by the General Manager who was elected when the Corporation came into operation. These regulations are:

1) The Internal Labour Regulations shown in Article 12(g) of the Statutes as "The Service Code of Personnel";

2) The Financial Regulations of the Corporation.

These two regulations require the approval of the Board of Directors.

The last paragraph of Article 15 of the Statutes which mentions the functions of the General Manager also gives him the necessary powers to guarantee the proper operation of the Corporation. Because of the extensive powers of the Board of Directors, the General Manager performs only a limited function. The Board deals with most matters concerning personnel i.e., Article 12(j) of the Statutes states that "The General Manager shall submit to the approval of the Board any employee contract in excess of U.S $5,000."

4) The Managers of Air Navigation Services

The Managers of Air Navigation Services are the representatives of the Corporation in each of the Contracting States. There are five Managers who are appointed by the General Manager and are under his supervision and control. They follow his guidelines. The Managers of Air Navigation Services are responsible for the proper operation of the services for which the Corporation is responsible in each member State. In the performance of their duties they shall be expected to act with an extremely high spirit of co-operation which is absolutely necessary in obtaining the best results. A lack of co-operation and co-ordination between the General Manager, the Managers of Air Navigation Services and the local aeronautical authorities may interfere with the high standards required for the safety of air traffic services.

Section II

Finance

Another important advantage of the public international corporation over the traditional international organization is the existence of independent funds of permanent equity in the form of "corporate capital". The corporate managers are accountable financially for their daily decisions. There are three alternative methods of financing the public international corporation:

1. The raising of capital by shares;

2. The issue of debentures which bear interest;

3. Direct governmental contribution in agreed quotas.

One of the first two methods should be chosen for any public international corporation which requires large capital investments. The last method is used by those public international corporations which mainly demand international organization and scientific or technical advisory work, but no large investment of capital. This last method was chosen by the member States of COCESNA, because they already had facilities and equipment to render air traffic services and only needed international organization and improvement of equipment and methods.

1. <u>Financial Autonomy</u>

More important than the application of the law of the domicile or the use of national legislation to make the regulations of the legal life of the corporation is the financial autonomy, which assures the corporation a characteristic element of autonomy. In cases where a public international corporation is entirely or predominantly financed by direct State appropriations, the question of political control of such appropriations from within the member States becomes an important issue;

"Students of the National Public Corporations have devoted much attention to the respective merits of

Treasury and Parliamentary control on the one hand, and financial autonomy on the other hand, conclusions are, on the whole, in favour of freeing the public corporation from cramping Treasury supervision or parliamentary bickering, while subjecting it, on the other hand, to public supervision, by auditors, annual reports, selected parliamentary or other representatives and responsible committees.

In the international sphere, the cramping effect of frequent interference would be multiplied manifold by the number of countries concerned, and the need is, therefore, clearly for long-term national appropriations for a period of years, and transfer of control, during that period, to an intergovernmental agency, such as a Permanent Control Commission. Here the problem becomes one aspect of the more general problem of supervisory control over the I.P.C." (41)

The financial autonomy is composed of two elements which are: the autonomy in relation to the States and the proper resources. The proper resources are those that public international corporations can obtain by different legal operations as taxation, sales contracts, rental contracts, charges for the users of a service provided, contributions of member States etc. There are various ways to fix the amount of charges to be paid by the users of the service provided. One way is when these are already established in the constitutional charter of the corporation. However, this does not mean that financial autonomy is denied. Here the States lose, after the conclusion of the Convention, the competence to

41. W. Friedmann, International Public Corporations, The Modern Law Review, 1942-43, Vol. VI, p. 185.

decide upon the fixing of charges and other regulations for users of the service. In certain cases the public international corporation with financial autonomy is not completely free from the guardianship of States, as they have to ratify the taxes and tariffs set by the main authority. An isolated case in this respect, is Basel-Mulhouse Airport,[42] where Article 8 of the Book of Charges (Cahier de Charges) says that the nature and quantity of taxes to be received by the Airport "shall be determined by the decision of the Council of Administration subject to the ratification of competent French and Swiss authorities in the conditions provided in Article 13 of the Statutes."[43] COCESNA, a non-profit public international utility corporation[44] posesses financial autonomy. The member States agreed to contribute with a circulating capital of U.S. $100,000,[45] to provide necessary equipment, buildings and installations.[46] The Corporation shall maintain its financial equilibrium with proper resources, will fix tariffs and conditions for fees to air space users and will impose and collect

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42. See Page 19.

43. Text of Basel-Mulhouse Airport Convention in H.T. Adam, op.cit.,p. 230-247.

44. Article 3 COCESNA Convention and Article 2 of COCESNA Statutes.

45. Article 22 COCESNA Convention.

46. Article 22(3), Idem.

these fees.[47] The General Manager shall present to the Board of Directors for approval drafts of the tariffs, contracts, regulations, commercial transactions, budgets, work programs, investment programs, reports, balance sheets, and statements of accounts.[48] This puts the General Manager under complete control of the Board of Directors, but his daily decisions are not subject to any sort of control. The Board of Directors shall appoint auditors to audit the operations of the Corporation.[49] The Board of Directors has considerable autonomy in regard to the member States as it is only required to present a detailed annual report of activities and economic status of the Corporation.[50] To conclude the aspects of the financial autonomy of COCESNA and to compliment what already has been said, it is important to mention the fact that it does not receive yearly contributions of funds from members. Thus subject to political vagaries as ~~is~~ well illustrated in certain international organizations. COCESNA has financial autonomy. The Convention does not have a provision to deal with the possible losses which the Corporation may incur. Based on the principle that member States contributed to its formation with capital

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47. Article 23, COCESNA Convention.
48. Article 15, COCESNA Statutes.
49. Article 12(m), Idem.
50. Article 12(k), Idem.

on a pro rata basis, they will have to pay the losses if it becomes necessary to do so.

2. Financial Resources

The Corporation obtains financing from different sources, but the initial and principal sources are funds from member states. The Sources are the following:

i) Initial capital given by the member States on an equal basis, each State agreeing to invest an equal amount of capital;[51]

ii) Every State makes available to the Corporation all equipment necessary to operate the services. Their obligation is limited to the equipment to be used in its proper territory and is described in the annex of the Convention. Only the right to use and possess such equipment, with obligation to maintain properly, was given to the Corporation while the States retain all other rights over the equipment;

iii) The use and possession without charge of facilities (including movables and immovables necessary for the operations) is given to the Corporation;[52]

iv) The tariffs to carry out its duties should be in accordance with Article 5 of the Chicago Convention.

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51. Article 22(1) - COCESNA Convention

52. Article 22(2)(3), Idem.

In this way the Corporation should be capable of generating sufficient revenues to operate on a non-profit basis. The Corporation could also obtain, if necessary, loans on national or international markets.

3. Special Privileges and Tax Exemptions

Articles 6 and 17 of the Convention set out the special privileges and tax exemptions to which the Corporation is entitled. First we will study Article 6 and then Article 17.

Article 6 says that the contracting States will give the Corporation, with regard to activities and services established in their respective territories, such privileges needed to fulfil its functions, which are offered to international organizations and autonomous and official entities. The Central American countries have differing legislation for the treatment of international organizations and autonomous and official entities. This Article is not specific and could create problems of interpretation. Up to now the Corporation has never had problems with the application of the taxation laws of the member States, but in the future they could cause conflicting situations in the normal operations of the Corporaion. Article 6, instead of saying that the Corporation should be treated like an international organization or an autonomous and official entity, should enumerate in a very specific way its perogatives and privileges.

COCESNA is an international corporation which started operating with an initial state investment, therefore, it is illogical to impose taxes upon it. These taxes in one way or another will reflect in the budget of member States. The Corporation is not obliged to pay any kind of taxes whatsoever, and this is reinforced by Article 17 which is more specific and states that all assets, income as well as other acts and operations authorized by the charter "shall be exempt from all nature of taxes, duties and other contributions, insofar as permitted by the respective legislation." The idea behind the drafting of this Article is that such exemption of taxes, duties and contributions will only be applicable if they do not interfere with the national law of the member States. Actually none of the national laws of the member States are in conflict with the exemption rights of COCESNA.

Section III

The Status of Personnel

Like in any other intergovernmental organization, in COCESNA the personnel have distinctive duties and responsabilities. The Constitutional Charter of the Corporation, as in most intergovernmental organizations, does not deal with certain aspects in relation to personnel, like appointing, selection, categories, immunities and privileges. The tendency is to supplement the basic texts by a detailed agreement or by a service code. For the

United Nations Organization that detailed agreement is normally the General Convention on the Privileges and Immunities of the United Nations,[53] approved by the General Assembly on February 13, 1946, now acceded to by more than sixty States. The Constitutional Charter and the Statutes of the Corporation only have certain provisions in relation to personnel which are the following:

a) Nationality of personnel;

b) Obligation to hire certain personnel;

c) Immunities and privileges;

d) Employees to be appointed by the Board of Directors;

e) The salary and working conditions of the General Manager;

f) The functions of the General Manager; and

g) That the personnel shall be governed by a service code;

and must be composed of natural citizens of Central America. Only in special circumstances enumerated by the Board of Directors should persons with nationalities other than the Central American be employed. For example, a case may be made for a person with special skills and training to perform jobs which could not be carried out by natural Central American citizens. Foreign personnel are employed on the understanding that they will train (within a reasonable time) the Central American personnel.

The Corporation was required by Article 20 of the Convention to hire employees which at that time were working

53. United Nations Treaty Series, V.1-2, 1946-47, p.15-32.

for the government or public and private institutions which provided the services which were entrusted by the Convention to the Corporation. The labour relations between COCESNA and the personnel are regulated by the national law of member States where such relations take place. There are certain personnel appointed by the Board of Directors, such as the General Manager[54] and the auditors.[55] The Board of Directors shall determine the Manager's salary and other working conditions. The only member of the personnel of COCESNA whose functions are regulated in the Statutes is the General Manager.[56] The personnel of the Corporation shall be governed by the Service Code. Article 18 of the Statutes which deals with the creation of such a Code, states that it will include provisions concerning the selection of personnel in order to ensure that employees possess the indispensable qualifications for the proper operation and efficiency of the Corporation. Even though it was not mentioned in Article 18 of the Statutes, the Code shall be a well elaborated instrument destined to meet the requirements of the organization in regard to personnel, avoiding minutious contracts of employment, which invariably refer to the Service Code which becomes a part of the contract.

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54. Article 12(1) COCESNA Statutes.
55. Article 12(m) Idem.
56. Article 15, Idem.

1. Immunities and Privileges of Personnel

Employees of COCESNA are given facilities of immigration and duty-free admission for personal effects and household furnishings in the territory of member States. There are no other privileges and immunities granted under this Convention to the personnel regardless of their category. Other international conventions like the Chicago Convention, clearly lay out the immunities and privileges of the personnel.[57] These are according to corresponding personnel of other public international organizations. The Eurocontrol Convention is specific in mentioning the privileges of its employees and the application is uniform and not subject to the law of each member State.[58]

2. International Character of Personnel

The legality of the international character of personnel is not supported in the Convention by any Article like it is in the Chicago Convention and the Charter of the United Nations.[59] I make this comparison with ICAO or the United Nations even though they are in the category of international

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57. Article 60 Chicago Convention.

58. Article 24 Eurocontrol Convention.

59. Article 60 of Chicago Convention and Article 100 of the Charter of the United Nations.

organizations and COCESNA is a public international corporation. The point here is to analyze whether certain personnel of COCESNA have international character and to see if these persons in the cetegory of international civil servants are only responsible to the organization they serve and to see if they are not allowed to seek or receive instructions from States or other external authorities.

Tancelin(60) analyzes the topic of the international character of the personnel of Asecna basing himself on the definition of Mme. Bastid (Basdevant) of the international civil servant, and comes to the conclusions that a part of the personnel have international character and others do not. To analyze this topic in COCESNA, I will depart also from Mme. S. Bastid's (Basdevant) definition which has become a classic. The definition is the following:

> "An international civil servant is a person to whom the representatives of several States, or an organ acting on their behalf, have entrusted, in virtue of an inter-state agreement and under their common supervision, the continuous and exclusive exercise of functions in the common interest of the States in question subject to special legal rules." (61)

Based on that definition which has a number of elements, I will analyze the international character of the personnel of COCESNA, taking into consideration the elements of this definition.

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60. Maurice Tancelin, op.cit., p.43-49

61. Mme. S. Bastid (Basdevant), Les Fonctionnaires Internationaux, p.53. Translation made by the author.

The first element is the existence of an inter-state agreement, that entrusted the functions. No doubt that the COCESNA Convention is an inter-state agreement between the five Central American countries, therefore this element of the definition should not be a matter of further discussion.

The second element is that international civil servants are subject to special rules concerning their selection, discipline, privileges and immunities. Does the COCESNA Convention have this element? This question can be answered by looking at the Constitutional Charter and Statutes. The Charter grants the personnel facilities of immigration equal to those granted to foreign technicians in international missions. Other facilities will be agreed upon, for example, the duty free admission of personal effects and household furnishings, when they are entering one of the member States, when contracted, transferred or when contract is terminated by the Corporation.

A third element is that the functions should be exercised in the common interest of the States. This element is inherent to the personnel of the Corporation because its functions are to provide a public service which is in the common interest of the member States. Therefore, I come to the conclusion that the personnel of COCESNA have international character, but it is not properly supported by the Charter, by the Statutes, nor the Service Code, as it is in Asecna Convention, the United Nations Charter, the Chicago Convention and other international conventions.

CHAPTER III

FUNCTIONS OF COCESNA

Section I

1. Attributions and Responsibilities of the Corporation

The attributions of the Corporation are given to it by Article 2 of the Convention which states that it has exclusive rights to provide air traffic services, aeronautical telecommunications and radio aids to air navigation in the territories of all five member States. The Corporation may also provide these services to non-member States through agreement. The services and aids are those specified in the regional plan of ICAO. It may provide within the territories of the member States by means of contracts with public or private entities, the above mentioned services and aids not specified in the regional plan of ICAO. The Corporation may also provide air traffic services specified in the regional plan of ICAO, different from those entrusted to it, with the written authorization of competent authorities of all the member States. The Corporation does not deal with the administration of airports of the member States like Asecna does.[62]

The Convention does not make any distinction between the lower and upper airspace, neither does it define which

62. Article 2 Asecna Convention.

category of air traffic[63] is to be controlled. A provision in regard to the category of traffic was not written in the Convention because the member States did not consider it necessary as the idea was to control every kind of traffic, as is actually done.

COCESNA has efficient, very high frequency (VHF) radio communications services which are rented to the commercial operators of air lines; the revenues received from this operation help to provide the air navigation services at a lower price. Air navigation services are provided to aircraft flying at and over the 20,000 feet Flight Level (FL200) through COCESNA's Area Control Centre (ACC-CENAMER) in Tegucigalpa, Honduras. Flight information service for the purpose of giving advice useful for the safe and efficient conduct of aircraft operating under 20,000 feet Flight Level (FL200) in the oceanic routes, is provided through the Flight Information Centre (FIC-CENAMER) in Tegucigalpa, Honduras. This centre coordinates its operations with the air traffic services facilities of the member States. The services are provided to civil and military aircrafts of the member States but only the civil aircrafts have to pay charges for the service. During the year 1975 the monthly average nautical miles flown by civil and military aircrafts under COCESNA's services were as follows: 850.301 for civil and 66,416 for military.

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63. **Such as civil, military, customs and police aircraft.**

Besides the aforementioned attributions (of air traffic services), Article 2(3) of the Convention gives the Corporation the following responsibilities:

> "a) Study and propose to the contracting parties, based on norms and methods recommended by the International Civil Aviation Organization, the uniformity of national norms for control of air traffic and such measures as might be adopted by institutions responsible for the organization and security thereof.
>
> b) Adopt such measures as necessary for the appropriate training of personnel.
>
> c) Promote and coordinate studies concerning air navigation services and installations, taking into account technical evolution and, as appropriate, propose to the contracting parties any changes in the regional plan of air navigation which should be submitted to the International Civil Aviation Organization, with regard to the responsibilities referred to in this Article."

2. <u>The Executive Powers of the Board of Directors</u>

Public international corporations are created with executive powers and/or jurisdictional or parajurisdictional powers. The corporations with jurisdictional powers can take cognizance of claims of private individuals and States. The corporations with parajurisdictional powers can perform certain acts for the establishment of offences or for the detention of delinquents. The executive powers have been classified into perfect, reduced and imperfect ones.(64)

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64. H.T. Adam, <u>op. cit.</u>, p.58.

The powers in public international corporations, which could be a matter of discussion, are the executive ones. Therefore a brief commentary on them would be appropriate. The powers of the public international corporations are those stated in the convention which created them. There are cases where the member states set guidelines to be followed by the corporations, thus reducing the executive power. When a public corporation can not exercise its powers, because further approval by member states of resolutions is required, the executive powers are imperfect, as the resolution adopted would only be obligatory after being approved.[65] The formation and realization of the executive perfect powers are conditioned by various factors. Firstly by the possibility of taking decisions by the majority of votes of the collegiate organ. Secondly by the existence of the obligatory value of the decision in the exterior plan of the organ.[66] COCESNA has executive powers because its Board of Directors which is composed of one representative from each member State, takes its decisions by a majority vote: i.e., three votes form a majority and the decisions are not subject to a further approval or ratification by the member States.

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65. H.T. Adam., op.cit. p. 57-58.

66. Idem., p. 58.

3. The Regulatory Powers of the Board of Directors

The Board of Directors has the power to establish its own Internal Regulations and also the ones of the Corporation. which are the Financial Regulations and the Personnel Service Code. Article 4 (last part) of the Convention states:

> "The Board shall establish, by unanimous decision of its members, its internal regulations and such others as are necessary for the proper functioning of the Corporation."

The Statutes of the Corporation mention a series of provisions which shall be included in the Internal Regulations of the Board of Directors such as frequency of meetings, and the form in which meetings are to be convoked.[67] The Financial Regulations are subject to certain provisions set out in the Statutes. The most important ones are:

a) Procedures for the preparation and execution of the budget and all matters related to the presentations and intervention of accounts;

b) Maintenance of an analytical system of accounting showing the cost of the various services provided and the benefits derived from same.[68]

The Board of Directors is entitled to make all necessary regulations for the Corporation, but only the Financial Regulations and

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67. Article 11 COCESNA Statutes.

68. Article 19 (a) (e), Idem.

the Personnel Service Code are specifically mentioned in the Statutes. The Statutes also give provisions which are to be included in the Service Code, such as those concerning the selection of personnel in order to ensure that employees possess the indispensable qualifications for the proper operation and efficiency of the Corporation.

In relation to the Statutes, Article 26 of the Convention says that the Corporation shall draft its own Statutes, which shall then be submitted for approval to each of the contracting parties through the customary channels.

The Board of Directors also has the power to set the tariffs and fees to be paid by users of the services being provided.(69) The member States gave the Corporation part of their sovereign rights by authorizing it to operate a service in their territories, as a consequence, they also gave the Corporation the power to set such tariffs and fees. The regulatory power is not the executive type which corresponds with sovereign States and which is not usually delegated. The Board of Directors has regulatory power but is limited to acts which do not fulfill the general characteristics of those of governments. Article 2(3)(a) of the Convention states that one of the responsibilities of the Corporation is to study and propose to the contracting parties, based upon standards and recommended practices of the International Civil Aviation Organization, the uniformity of national regulations for control of

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69. **Article 12(d) COCESNA Statutes.**

air traffic and such measures as might be adopted by institutions responsible for the organization and security thereof. Eurocontrol's Article 6(2)(a) is very similar to Article 2(3)(a) of COCESNA, with the exception that Eurocontrol should take into consideration the needs of national defense. The aforementioned Article 2(3)(a) of COCESNA does not give it the power to make regulations for air traffic services; neither Eurocontrol nor Asecna have regulatory powers. In the case of Asecna, Article 20 of its Book of Charges (Cahier des Charges) can not be invoked to say that it has regulatory power in matters of setting the tariffs and fees. The measures that the Agency is entitled to take do not have the formal nature of regulations.[70] In drafting the aforementiond Article 2(3)(a) of COCESNA, representatives envisaged a common problem for all member States of the Chicago Convention, to-wit a lack of uniformity which exists in the aeronautical laws and regulations of those States in relation to ICAO standards and recommended practices. The spirit of Article 2(3)(a) reflects the attempt of the member States of COCESNA to comply with obligations imposed upon them by Articles 28 and 37 of the Convention on International Civil Aviation to which they are parties.

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70. Tancelin, op.cit., p.57.

Section II

The Exclusive Right of COCESNA to Provide its Services

COCESNA, which is a completely autonomous organization, has, according to its Charter, exclusive rights to provide air traffic services, aeronautical telecommunications and radio aids to air navigation in the territories of the contracting parties.[71] COCESNA provides such services and aids as mentioned and as specified in the ICAO regional plan, in the territories of the contracting parties and in any other areas as authorized under international agreement.[72] These services do not have any limitation in regard to altitude in the airspace. To study the exlusive rights of COCESNA to provide its services, it is convenient to describe the services to be provided, which are mentioned in the Constitutional Charter and to see whether the member States at the moment of signing the Convention had the right to grant the Corporation the exclusive rights to provide such services. In the first case, Article 2(1) of the Convention mentions three services which are: AIR TRAFFIC SERVICES, AERONAUTICAL TELECOMMUNICATIONS and RADIO AIDS TO AIR NAVIGATION. Each of the three services comprehend various types of activities, which are not described in the Convention,

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71. Article 2(1) COCESNA Convention.

72. Article 2(1)(a) COCESNA Convention.

nor in the respective Aeronautical Legislations of the member States. These services are fully defined and described by Annexes 2, 10 and 11 of the Chicago Convention.(73) The first service provided is "air traffic services". The term service should be used as defined in Annex 2 Rules of air: "The term service is used as an abstract noun to designate functions, or service rendered".(74) This Annex also gives a definition of air traffic services which states: "A generic term meaning variously, flight information service, alerting service, air traffic advisory service, air traffic control service, approach control service or aerodrome control service".(75) Also according to Annex 11 of the Chicago Convention,(76) air traffic services shall comprise three services identified as follows: The air traffic control service, the flight information service and the alerting services.(77) The second service to be provided by the Corporation is "aeronautical telecommunications". As in the first service (air traffic), Article 2(1) of the Convention only mentions the service but does not describe it. This term

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73. Annex 2, Rules of the air, Sixth edition - September 1970, Annex 10, Aeronautical telecommunications, Vol.II, Third edition, July 1972 and Annex 11, Air traffic services, Sixth edition, September 1970.

74. Annex 2, op cit., Chapter 1, p.9.

75. Idem.

76. Annex 11, op. cit.

77. Idem., Chapter 2, General, 2.3- 2.3.1-2.3.2 and 2.3.3.

encompasses a number of activities and because of their nature, private enterprises could claim they belong to the private domain, and therefore they should have the right to provide some of those services in the Central American region to other enterprises, public entities and individuals. Such services will be provided on a profit making basis, which is not the case of COCESNA which operates as a non-profit public international utility corporation. Another source to look into for a detailed description of the term "aeronautical telecommunications" could be the aeronautical laws of the member States, but they do not describe it. The description of this term given in Annex 10 of the Chicago Convention, "aeronautical telecommunications",[78] is an important source for uniform interpretation of its meaning, although Annex 10 is not legally binding upon member States of COCESNA, since it is not an integral part of the Convention nor of the Aeronautical Laws of these States. The Chicago Convention permits a contracting State to disregard the standards contained in an Annex of amendment thereto after notification to ICAO, whenever such State finds it "impracticable" to comply therewith.[79] Annex 10 defines "aeronautical telecommunications service" as follows: "A telecommunications service provided for any aeronautical purpose". This Annex[80] states that aeronautical

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78. Annex 10, op.cit.

79. Thomas Buergenthal, Law Making in the International Civil Aviation Organization, p. 119.

80. Annex 10, op.cit., Chapter 2, Administrative provisions relating to the international aeronautical telecommunications service, 2.1, Division of Service.

telecommunications service shall be divided into four parts:

1) Aeronautical fixed service;
2) Aeronautical mobile service;
3) Aeronautical radio navigation service; and
4) Aeronautical broadcasting service.

The third function of COCESNA which is "radio aids for air navigation" corresponds to the third division (Aeronautical radio navigation service). To describe the third function it is also advisable to us the definition given in Annex 10,[81] which is: "The aeronatuical radio navigation service comprises all types and systems of radio navigational aids in the international aeronautical service".

Now that the services have been described according to Annexes 2, 10 and 11 of the Chicago Convention it is necessary to look at the respective domestic Aeronautical Laws of the member States to see whether the right to provide the aforementioned services were legally granted by member States to COCESNA. First we will start by studying the Aviation Code of Nicaragua.[82] Chapter VII of this Code, Auxiliary services to air navigation, Article 54 states:

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81. Annex 10, op.cit., Chapter 6, Aeronautical radio navigation service, 6.1 General, 6.1.1.

82. Air Laws and Treaties of the World, p.1849.

"Auxiliary services to Air Navigation are those which guarantee its safety and regularity, such as air traffic control, aeronautical radio communications, meteorological information service, and systems of beacons for day and night".

This article does not describe the services but merely mentions them in a generic way. Article 55 of that same Aviation Code states:

"Control of the auxiliary services to air navigation is a function of the Ministry of Aviation. In the exercise of this function, it shall adopt the measures it deems proper for the greatest safety and efficiency of the flights, for the purpose of protecting human life and property. Likewise when it is in the public interest, it may contract directly for the rendering of this service with technically qualified enterprises, or grant permission therefore to companies which do not perform them for profit, in either case, the service must be rendered to the benefit of air navigation generally under the supervision of the Ministry of Aviation."

This Article confirms that the auxiliary services to air navigation is a function which falls in the public domain of the State. The second part of this Article gives the State the right to contract with non-profit organizations for the rendering of such services. This is exactly the case of COCESNA.

Honduras, another member State of COSENA, has laws similar to those of Nicaragua. The Civil Aviation Law of Honduras[83] Chapter VIII Services of air to navigation, Article 59 states:

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83. Air Lews and Treaties of the World, p.879.

> "Services of aid to navigation shall be those that safeguard flight safety and regularity, such as flight control, aeronautical radio communications, weather reports and day and night radio beacon services".

This Article is very similar to Article 54 of the Nicaraguan Aviation Code.(84) It only mentions services such as flight control, aeronautical radio communications etc., but does not describe them. Article 60 of that same Aviation Code says the following:

> "The State shall be responsible for the control and establishment of services of aid to navigation. In the exercise of this responsibility rules shall be enacted that are convenient for insuring safety and efficiency of flight, for the purpose of protecting human life and property. When it is in the public interest, the State may directly contract with technically qualified firms for the supply of such services or grant permits for the same purpose to firms that do not pursue lucrative ends. In either case this service must be established for the benefit of air navigation in general and under the supervision of the State."

This Article differs from Article 55 of the Nicaraguan Code(85) in the sense that the latter mentions the States as responsible for the control and the establishment of services of aid to navigation.

The Civil Aviation Law of El Salvador(86), Chapter IX,

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84. See page 51 and 52.

85. Idem.

86. Air Laws and Treaties of the World p.641.

Services of aid to air navigation, Article 77, states:

> "Classification Services to air navigation shall be those of traffic control, aviation radio communications, meteorological information, services of day and night beacons and any others necessary to assure safety and regularity of air navigation".

As in the other Laws, this article merely mentions the services without describing them but also adds that any other service necessary to assure the safety and regularity of air navigation shall be considered as a Service. Article 78 of that same Law says:

> "Control of aid services. The Ministry of Defense has jurisdiction as to control of air traffic, meteorological services, aviation communications and radio aids to air navigation. In the exercise of this jurisdiction it shall specify the means which are necessary for greater flight safety and efficiency, in order to protect human life and property. It may, when in the public interest, grant permits for the establishment of such services to technical organizations which shall be considered auxiliary to the Department of Aviation and affected with the public interest, like photogrammetric flights, emergency flights in cases of disaster etc."

This Article gives the Ministry of Defense jurisdiction over the control of the services of aid to navigation. The other member States which are Guatemala and Costa Rica have aeronautical laws very similar to those already mentioned.

Taking into consideration all the facts, services to be provided by COCESNA are in the public domain of the States, which therefore have the right to delegate them. As they are not well described in the Convention or in the domestic laws of the member States, some of them could be considered to be in the private domain and therefore susceptible to be rendered by private enterprises to the air lines that operate in the area. To illustrate this particular situation it is appropriate to mention a unique case which is actually taking place in Tegucigalpa-Honduras, headquarters of COCESNA. A private enterprise according to a contract is providing a service for passenger reservations by a computerized system to two local international airlines. This service called reservations messages in Annex 10 of the Chicago Convention, Aeronautical telecommunications, is included as part of the Aeronautical fixed telecommunications network (AFTN).[87] This case has been a matter of discussion in the last two meeting of the Board of Directors of the Corporation. (One held in Managua, Nicaragua on June 8th and 9th, 1977[88] and the other in Tegucigalpa, Honduras on November 22nd and 24th, 1977.[89]) The Board of Directors in those two meetings passed resolution number 13 [90] and resolution number 5[91] respectively. These resolutions are identical, and support the thesis that the service which was being offered by that

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87. Annex 10, op.cit., Chapter 4.- 4.4- 4.4.1.1.

88, Minutes of 26th Meeting of the Board of Directors of COCESNA p. 48 - 59 (23.0 - 23.27).

89. Minutes of 27th Meeting of the Board of Directors of COCESNA p.30 - 36, (11.0 - 11.9).

90. Minutes of the 26th Meeting of the Board of Directors of COCESNA, p.58(23.27).

91. Minutes of the 27th Meeting of the Board of Directors of COCESNA, p. 35 (11.9).

particular private enterprise to the air lines was within the field of COCESNA's functions. The resolution did not mention any action to be taken against the airlines or the private enterprise but it authorized the General Manager to negotiate the participation of COCESNA in the respective contract between the private enterprise and two international airlines. In the event that this problem could not be solved by negotiation, the Board could pass a resolution of an executive character, to be enforced by a member State, but if that resolution is not enforced the next step would be to use the procedure established to resolve controversies between the contracting parties or between one or various of the contracting parties and the Corporation.[92]

Section III

The External Relations of the Corporation

The external relations of the Corporation could be divided into two categories. The relations with international organizations and those with member States. The question here is which of these two relationships is the most important to help COCESNA in the fulfillment of its duties and functions. As an international organization COCESNA is obliged to maintain relations with others and also with the member States. These

92. Article 25 COCESNA Convention.

two relationships may be different in nature but both are equally important. COCESNA can not afford to operate properly without them.

1. Relations with International Organizations

The relationship of COCESNA with international organizations could be divided into two categories. The relations with air traffic control organizations, which have similar objectives and functions, and relations with international organizations whose objectives are oriented toward cooperation and toward assisting developing countries in the technical and economical fields. In the first group we find the Air Navigation Security Agency for Africa and Madagascar (Asecna)[93] and the European Organization for the Safety of Air Navigation (Eurocontrol).[94] These two organizations are the counterparts of COCESNA in Africa and Europe. COCESNA, Asecna and Eurocontrol are the most extensive air traffic control organizations presently operating in the world. The relationships between these two organizations and COCESNA are unknown, in other words, they do not exist. These three organizations have similar objectives and functions. Even though they are in different regions of the world and they do not deal exactly with the same problems, some kind of relations

93. See footnote 4.

94. See footnote 3.

between the three could be useful because they have the same problems in performing their duties. COCESNA could send personnel to be trained in Asecna and Eurocontrol schools, which could do the same likewise. It is important for COCESNA to establish these relationships which may be beneficial to all parties.

COCESNA has always maintained very good relations with ICAO. This relationship started when the Directors of Civil Aviation of the five Central American Countries requested ICAO through the Regional Office for North America and the Carribbean (Mexico City) for legal and technical advice on the establishment of the Corporation. To enable it to meet this request, ICAO was given a grant from the United Nations Technical Assistance Contingency Fund. A report on the organization, on the financing and technical requirements of COCESNA and a draft convention were completed in October 1959 discussed on November 4th and 5th of that same year, and approved in principle by the Directors of Civil Aviation.(95) In 1959 personnel from the Regional Office attended three meetings of the Directors of Civil Aviation of the Central American Republics in relation with the establishment of COCESNA.(96) The assistance of ICAO throughout the years has been significant and necessary for the proper

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95. ICAO DOC-8063 A 13-P/1, Annual Report of the Council to the Assembly for 1959, Chapter V, Technical assistance, 3rd. par. p. 58.

96. <u>Idem</u>., Chapter II, Air navigation, p.42.

development of COCESNA.[97] It is important to mention that private enterprises also cooperated in the establishment of the Corporation, such as the Technical Commission of Airlines which was composed of the seven air carriers which operated, at that time, in Central America and Panama.[98] Also cooperating with the Banco Centroamericano de Integración Economica,(BCIE), the Secretaria de Integración Economica Centroamericana (SIECA), resposible for the treaties governing the Common Market of the region and the Regional Office of Central America and Panama (ROCAP) of the International Development Agency (IDA).

ICAO through the North American and Caribbean Regional Offices has always been represented at the meeting of the Board of Directors of COCESNA.[99] In June 1976,the ICAO Council at its 88th session unanimously approved the recommendation of the President of the Council[100] to bestow the Eleventh Edward Warner Award upon COCESNA "for its contribution in the provision of efficient and coordinated services for air navigation

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97. ICAO DOC.8140 A 14-P/3, Annual report of the Council to the Assembly for 1960, Chapter V, Technical Assistance Projects, p.51 and ICAO DOC.8219 A 14-P/4, Idem.,for 1961.

98. Transportes aéros Centro Americanos (TACA), Transportes Aéros Nacionales (TAN), Empresa Guatemalteca de Aviación (AVIATECA), Lineas Aéreas Constarricenses,S.A. (LACSA) Lineas Aéreas de Nicaragua, S.A. (LA NICA), Servicio Aéreo de Honduras S.A. (SAHSA), and Pan American World Airways (PA (PAA).

99. Minutes of the 26th and 27th Meeting of the Board of Directors of COCESNA.

100. ICAO DOC. C-WP/6346.

and communications which has remarkably increased the safety of international flights in the Central American region". (101) The award was presented by the President of the Council to COCESNA in Tegucigalpa, Honduras on October 1st, 1976.[102] COCESNA participated as an observer in two of the most important meetings held by ICAO in 1976, which were the Regional Meeting of Aerial Navigation for the Caribbean and South America, held in Lima, Peru between October 5th and 8th and the Ninth Conference on Air Navigation held in Montreal, between April 21st and May 14th of the same year.[103]

Neither COCESNA nor any other air traffic control organization has ever been a member of ICAO because they are not States. The Chicago Convention clearly stipulates that membership is open to sovereign States only[104] and it distinguishes between States which may join the Organization either by ratification[105] or adherence[106] to the Chicago Convention. On March 15, 1967 the ICAO Council decided to include COCESNA in the list of international organizations which may be invited

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101. ICAO DOC. 9170-C/1032 p.8.

102. ICAO DOC. 9189-C/1034, Council, 89th session, p.26.

103. ICAO DOC. 9188, Annual report of the Council to the Assembly for 1976, Annex 7.

104. ICAO DOC. 5302 (C/657), Council third session (1948), See discussion in the Council relating to the application of Trieste, p.2.

105. Article 91 Chicago Convention.

106. Article 92, Idem.

to its meetings dealing with the Caribbean Air Navigation Region.[107] COCESNA is on an up-dated list elaborated by the Secretary General of ICAO and remitted to the President and representatives of the Council naming the international organizations which may be invited to attend suitable ICAO meetings.[108] COCESNA assisted as observer to the 22nd Session of the ICAO Assembly in Montreal from September 13th to October 4th, 1977.[109]

There is no organic or functional relationships between COCESNA and international organizations like ICAO. Because air traffic control organizations represent quite a number of States and also because of the important role they play in the proper development of the services, it is wise to ask ourselves if the representation of COCESNA, Asecna or Eurocontrol in the Air Navigation Commission of ICAO, could be useful. These representatives could present their points of view to this Commission directly, instead of presenting their opinions through the national representatives. If they are admitted as representatives they should be limited to participation in discussing purely technical matters, excluding subjects which are established by groups of States and have a political character.[110]

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107. ICAO DOC.8672/971, Council sixtieth session, p.7.

108. Memorandum SG 847/78 E 4/1.

109. ICAO DOC.9215 A22- Res. p.30.

110. Maurice Tancelin, op.cit., p.72 and 73.

The Charter of COCESNA has a provision which allows the Corporation to establish the necessary liaison with national organizations for the discharge of functions and for maintaining other relations as needed for the proper operation of the services.[111]

2. Relations with Member States

The most important relationship of the Corporation with member States is through the Board of Directors, which is comprised of a representative from each of the member States.[112] The control of the member States over the Corporation is assured by the authority and powers given to the Board by the Convention. In order that the meetings of the Board may be considered valid, the presence of all members is required, and its decisions shall be adopted by majority vote.[113] This relationship of control and power is maintained by member States based on several provisions in the Charter and Statutes. For instance, the Board shall establish its Internal Regulations and such other provisions as are necessary for the proper functioning of the Corporation by unanimous decisions of the membership.[114] The drafting of

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111. Article 8 COCESNA Convention.

112. See pages 22 to 25.

113. Article 4 COCESNA Convention.

114. Idem.

the Statutes were done by the Corporation and had to be submitted for approval to each of the contracting States through the customary channels.(115) Also the member States may, after 5 years of its entry into force, denounce the Convention without expressing any cause. The Convention entered into force in 1961,(one year after it was signed in 1960)(116) 17 years ago. Up to now none of the States have expressed intention to denounce it. The final provision, and a very significant one, is that any State may adhere to the Convention after entry into force by depositing an instrument of adherence with the International Civil Aviation Organization. But the adherence of such non-signatory State shall be approved by unanimous consent of the contracting States.(117) The public international corporation nature of COCESNA gave it some kind of autonomy which is neither general nor absolute. The activities of the Managers of Air Navigation Services of the Corporation in each member State(118) create, from time to time, a few problems of co-ordination with local aeronautical authorities.

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115. Article 26, COCESNA Convention.
116. See Page 1.and 2.
117. Article 34 COCESNA Convention.
118. See Page 28.

These problems, which are of different kinds, have been discussed at the meeting of the Board of Directors, and the proper solution has been found. The most common problem is that the Managers of Air Navigation Services of the area, in the performance of their duties, follow the guidelines set by the General Manager. The Director of Civil Aviation, who is generally a member of the Board of Directors, may issue guidelines which differ from those issued by the General Manager. The members of the Board of Directors should exercise their functions in a collegial way and not individually; therefore the Managers of Air Navigation Services of the area are not obliged to take direct orders from them. A particular case was discussed at the 26th meeting of the Board of Directors where one of the members, who is the Director of of Civil Aviation of his own country, claimed lack of co-operation on the part of the local Manager of Air Navigation Services to solve a technical problem.[119] The Board of Directors passed a resolution, asking the General Manager to take all necessary measures to solve that particular problem.

The safety of human life in the airspace can only be maintained through the provision of efficient air navigation facilitites and aeronautical telecommunications. The provision of these facilities has been established by COCESNA, which utilizes

119. Minutes of the 26th Meeting of the Board of Directors of COCESNA held in Managua, Nicaragua, between the 8th and 9th, June 1977. p.22.

the combined efforts of the different bodies to obtain a common goal. Therefore unity is necessary within the bodies, the Corporation itself and the member States' Civil Aviation Departments as well. The relations between the Corporation and member States are as important as the Corporation itself.

CHAPTER IV

SYSTEMS OF REGIONAL CO-OPERATION

Section I

Air Traffic Control: Technical Evolution and Systems of Regional Co-operation

Air traffic control systems have evolved through generations. In the 1950's the technical and operational development of the systems was rudimentary at best, but served the needs of civil aviation in that decade. Air traffic control services were not fully defined and technical support systems were limited to ground/air communications facilities. Information sources were limited to filed flight plans as radar was not yet adapted for use by civil aviation.

The second generation developed when the impact of subsonic commercial jet became felt in the 1960's. Great changes occurred in air traffic systems; radar was now widely in use to permit direct surveillance of aircraft in controlled airspace. Along with radar, new techniques in air traffic control were introduced to supplant the flight plan information sources. The most important of these developments was the wide spread use of radio communication procedures between the pilot of an aircraft and the air traffic controller. This decade also saw the beginning of international co-operation in providing common air traffic services and facilities in the airspace over adjacent nations through the mediums of such organizations as Asecna, Eurocontrol and COCESNA.

The third generation starts around 1970, with another technical advance which is the introduction of data processing concepts. This generation is basically identified in relation to the introduction of automation in the ground controlled system. It is applied in the concept of substituting mechanical process for certain actions previously performed manually by the controller work force. If the second generation was the one of the radar, the third is the one of automation. The automation project is to take place in the United States around 1980. This third generation will introduce as its most important innovation the flight-data processing (FDP) and the use of radar-data processing (RDP). This last innovation provides automatic aircraft tracking and computer-generated alphanumeric display using digitized radar data. This will reduce to unexpected limits the work load that current communication systems impose upon pilots and controllers. Another goal to be accomplished in this generation will be the generalized use of area navigation in four dimensions (4-D RNAV). This will put civil aviation in the highest category foreseeable in the automation of ground facilities and equipment aboard airplanes.

In the 1960's helicopters, turbine-propeller and turbine jet powered aircraft were introduced into service which caused new saturation problems in traffic control that might be a cause of future accidents. In the report of the fourth

European Meditteranean Regional Air Navigation Meeting of ICAO held in Geneva from January 28 to February 21, 1958, (120) these problems were widely discussed. Statements about basic operational requirements were presented. An example of one which addressed itself to the matter of the introduction into service of new types of aircrafts and the creation of the mentioned ATC organizations is as follows:

> "Urgent preparation of air navigational facilities and services are required to meet requirements for the operation of present and future types of aircraft, and particularly for the increasing numbers of turbine-powered aircraft likely to be introduced from 1959 onwards, as well as for helicopters. Account should also be taken of the generally higher density of traffic than was the case in 1952." (121)

In this statement the main issue is the preparation of air navigational facilities and services to meet the requirements for the operation of present and future types of aircraft. To cope with this, States were supposed to invest large quantities of capital, which they could ill afford. In yet another statement it says that:

> "In developing supplementary procedures and recommending facilities, the meeting should bear in mind the advisability of making them compatible with operations in the adjacent regions." (122)

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120. ICAO DOC. 7870 EUM/IV.

121. Idem., Part II, Report on the Agenda, Statement of basic operational requirements, 1.4.1. general, 1.4.1.1.

122. Idem., 1.4.1.4.

Here the idea is that there should be a link between the supplementary procedures and facilities of one region with another. In relation to aeronautical fixed services this is the statement which was made:

> "The plans for aeronautical fixed services should be capable of meeting the requirements of ATS, SAR, MET, AIS (NOTAM) and airline agencies of the region. The circuits of the AFTN should be capable of integration with those of adjacent regions and should be engineered in such a way that transit times can be kept to a minimum. Additionally, the plans should take account of the necessity to reduce message transit times which will be consequent upon the introduction of a high speed aircraft." (123)

The necessity of integration of services is present here again. It was further suggested that certain equipment had to be replaced and this might require the investment of large quantities of capital:

> "Although it is desirable that HF radiotelegraphy be withdrawn as soon as possible, in order to avoid unnecessary duplications and to economise frequencies, it is recognized that there is a limited and temporary requirement at some locations for long range operational control HF radiotelegraphy (and meteorological information) communications. It is therefore suitable that radio frequencies should be provided in the Regional Plan for this application. However it is not necessary to include in the Regional Plan the specific locations at which HF radiotelegraphy is temporarily maintained." (124)

123. ICAO DOC. 7870 EUM/IV, Part II, op.cit., Footnote 121,1.4.5.1.

124. Idem., 1.4.5.2.2.

Changes were also to be made in the radio aids for air navigation:

> "VOR shall be installed as the primary aid for "track guidance" along all air routes and to provide coverage in all terminal areas for the establishment of such patterns of tracks as may be required for ATC purposes. These facilities should be deployed so as to provide coverage down to the lowest cruising altitude normally used by fixed wing aircraft" (125)

In respect of technical matters these statements are to be considered of great importance for the creation of the ATC organizations of the world.

Later in ICAO Assembly Resolution A 12-6 instructions were given to the Council with respect to the preparation of the Fifteen-years Forecast of Major Trends and Developments in International Civil Aviation. The Forecast under the name of "The Technical,Economic and Social Consequences of the Introduction into Commercial Service of Supersonic Aircraft"(126) was prepared. It was said in this report that improved air traffic services were required to deal with the great increase in density and speed of traffic, and that such a problem was accentuated by the introduction of subsonic jet aircraft.(127) Also that the new development in techniques in air traffic control services were being planned either to meet the increase in traffic

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125. ICAO DOC.7870 EUM/IV, Part II, op.cit.,footnote 121, 1.4.5.3.1.
126. ICAO DOC. 8087C/925, August 1960.
127. Idem.,p.73 No. 218.

encountered or the needs of subsonic jet aircraft.[128] The ICAO Council came to a conclusion that an international agreement was needed to cope with a part of the tremendous problems caused by the introduction of more advance techniques of air traffic control services:

> "International agreement will be needed to specify precisely basic system characteristics for air/ground and ground/ground communication equipment and systems, such as information coding and rates for data links for air/ground communications, and the development and extensive installation of suitable equipment may present considerable difficulties and require a long period for provisioning. For example, a greatly extended VHF system to provide static free coverage over all routes flown by supersonic aircraft may be required, with remote operation from control centres in many cases. On transoceanic flights forward VHF and UHF relay from specially positioned ships linked to terminal areas by means of tropospheric scatter communication links may be required. Another possibility is the use of earth satellites as passive relay stations." (129)

In undertaking the provision and operation of en route air navigation facilities and services, States believed that certain forms of regional co-operation were worthy of consideration. The form of regional co-operation used by States is the international operating agency (IOA).[130] The

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128. ICAO DOC.8087C/925, p.74, No.220.

129. Idem., p.84, No.265.

130. An International Operating Agency (IOA) as here referred to, is an autonomous establishment which is assigned the task of providing en route facilities and service within a defined area encompassing two or more sovereign States.

Aeronautical Radio Inc. (ARINC), a jointly owned firm established by the United States, a number of airlines and manufacturers to provide communications services, is the oldest international operating agency (dating back to 1929). The formation of such bodies, today numbering 12, has been a gradual process over the past forty years, with some acceleration noticeable in the 40's and again in the early 60's. The more extensive agencies presently operating are COCESNA, Asecna and Eurocontrol. Normally the agencies have not extended their activities beyond the sphere of air traffic services, aeronautical information service(s) and meteorological information.[131]

The majority of international operating agencies have been established in developing areas where the absence of en-route facilities and services was so noticeable that substantial improvement was necessary to make them operate within required standards. In some cases the air carriers operating in the region, joined together to provide the necessary en route facilities and services. These agencies were primarily concerned with the provision of air traffic services and communications services, and usually operated on a non-profit basis. These

131. ICAO Circular 103-AT/24, Global Review of the Economics of En Route Air Navigation Facilities and Services, P.80.

agencies were frequently taken over by the States involved but they normally continued operating independently, under government supervision and on a non-profit basis.(132) Experience to date has generally shown that:

"The existence of such agencies has resulted in a significant, beneficial contribution to air transport in the areas where they have developed. Among the more important advantages of the agencies evident so far, have been the following:

i) They are organized by governments or airlines specifically to serve aviation requirements.

ii) Their costing methods are generally sound and business-like.

iii) They generally relate their charges to costs.

iv) They often re-invest revenues in the procurement of required facilities and services.

v) They are interested in improving their facilities and services.

vi) They have an awareness of ICAO technical standards and charging principles.

vii) They are generally non-profit organizations.

viii) Being often regional in nature, unit administrative and other costs are likely to be reduced.

ix) Their personnel tend to be professional and well trained

x) Their facilities and services are effectively operated.

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132. ICAO Circular 103-AT/24, op.cit., p.81

xi) Through economics of size and greater efficiency of operation, needed implementation is accelerated.(133)

These are not the only advantages which developing States stand to gain from establishing joint international operating agencies. There are others such as the benefit from the pooling of human resources which is difficult to find in those countries. A common characteristic of every route facility system is that they compromise similar basic components whose implementation costs are not different from one region to another.(134) In the provision of this basic component States will obtain the greatest benefit from international operating agencies, "since the several systems existing would be replaced by one operated collectively and with pooled resources. This should achieve substantial savings, part of which could be devoted to developing the functional capabilities of the international operating agency. Thus the international operating agency, with more highly qualified personnel and more sophisticated equipment than were generally available to the entities replaced,would be enabled to render improved service at less cost to the participating States and to aviation as a whole".(135) There are several factors that will determine the size and membership of an international

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133. ICAO Circular 103-AT/24, op.cit., p.81.

134. Idem.,p.82.

135. Idem.

operating agency, and therefore its geographical scope of operation. The more decisive ones will be those related to political, economic, demographic and geographic considerations, although the existing facilities in some States together with the need for new and improved facilities when viewed against present and future traffic, will also influence determination of the functional scope of the agency. The operational framework of these agencies are very similar. First, presiding over the Agency would be a board of directors composed of representatives of member States and sometimes also representatives of the airline industry. The main responsability of the Board is to set the organization's policies; approve and change any charging system established; appoint key personnel and approve all major acquisitions. A chief executive who is responsible to the board, would be in charge of the daily operations of the agency in general. There is a technical branch responsible for the provision of enroute services. Another branch would be the administrative one whose function would be normal accounting operations and the assessment and collection of any charges established. The personnel should preferably be nationals of the member States; at the beginning there might be some difficulties in recruiting such staff and the member States usually have to invest in special training for these people. There are two other possibilities for regional co-operation which are worthwhile mentioning briefly. They are the regional contracting and purchasing agencies and the regional collection agency. The former exists when a group of States form a joint contracting and purchasing agency to negotiate with an enterprise outside their territories for the purchase and installation of components of air traffic services and communication services. Tangible benefits could be obtained from such negotiations, merely by virtue of the stronger bargaining position of a collectivity of States.(136) The regional collection agency is formed when:

> "States individually operating en route facilities and charging for the services rendered, will be involved in considerable accounting work, and perhaps even collection difficulties where there is a substantial volume of overflying traffic. In such circumstances a group of adjoining States might benefit materially by forming a joint collection agency which could collect the en route charges of a participating State overflown at the same time as it collected any charges due to the State where the aircraft lands, the revenues being duly allocated to each State according to its entitlement, less a pro rata share of the agency's operating costs. Since few aircraft would be unlikely to overfly the territory of all the participating States, collection of the en route charges due should prove reasonably sure. Such pro-rated costs should along prove less for each State than it would otherwise incur, and additionally there should be further economies progressively resulting from the employment of better trained staff capable of developing more sophisticated and streamlined procedures in general. (137)

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136. ICAO Circular 103-AT/24, op.cit., p.83.

137. Idem.,p.84.

Section II

1. The Air Navigation Security Agency for Africa and Madagascar (ASECNA)

The Air Navigation Security Agency for Africa and Madagascar, (Asecna), the first multinational organization for the common provision of air traffic services was established in West Africa by the Saint Louis du Sénégal Convention of December 12, 1959, signed and subsequently ratified by twelve African States.[138] Asecna was later joined by two additional States.[139] It was constituted as a public utility corporation (établissement public) with legal statutes and financial autonomy for the purpose of operating the services provided to ensure the regularity and safety of air navigation in the territories of those States.[140] The Agency administers the facilities and services provided for the transmission of technical and traffic messages, aircraft guidance, air traffic control, flight information, forecasting and provision of meteorological information, both for en route navigation and for approach and landing at terminal aerodromes. In addition, the Agency may be entrusted by each of the States with the management or maintenance of any operation serving an aeronautical purpose,

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138. Names of the States, see supra, footnote 4.

139. Togo and Mali.

140. Article 1, Asecna Convention.

under individual contracts. The Agency may also be authorized to establish special equipment programmes for a particular State, especially with regard to the operation of its terminal aids or any special tasks entrusted to the Agency.(141) The essential character of the Agency is:

> "la dualité de sa nature, c'est à la fois un instrument d'assistance technique et un organisme de cooperation en matière de sècurité aérienne". (142)

Historically Asecna is the result of "une déconcentration de l'administration française de l'aviation civile, le Secrétariat Général à l'aviation civile. Cette opération fut rendue nécessaire par la décolonisation effectuée par la France en Afrique, à partir de 1956. La décolonisation s'acompange généralment d'une assistance fournie par l'ex-puisance colonisatrice à l'Etat nouveau. La collaboration est substituée à la dépendance".(143) Asecna is administered by an Administrative Council. The organization of the organ such as it existed until 1972, was as follows: of the 24 seats on the Council, France occupied 12 places, while the African members each held one place. The Organization's headquarters were located in France. To this we can add that initially 99% of the skilled personnel were French. Asecna has a very strange legal structure

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141. Article 2, Asecna Convention.

142. Tancelin, op.cit., p.1.

143. *Idem.*

because France was not a party to the Convention but nevertheless occupied twelve seats out of the 24 on the Council as mentioned above, and because the headquarters of the Agency were situated outside the territory of the activities of the Agency. "These facts contribute to the impression of Asecna as an organization of a rather peculiar legal nature. The independence of the Organization seems equally disputable."(144) Today the influence of France has been greatly reduced because of two revisions of the Convention of Asecna. "The first one, agreed upon in 1972, reduced the number of Council seats occupied by France to 8, while the African members obtained 14 seats. The most recent revision, which took effect in 1974, introduced the one-state-one-vote principle to the Council, thus formally making France an ordinary member".(145) Asecna's Constitution is not consistent with Article 83 of the Chicago Convention, according to which, arrangements made by any contracting State shall be forthwith registered with the ICAO Council, which shall make it public as soon as possible. Now that all member States of Asecna are also members of ICAO, they should comply with that obligation but up to now they have never done so.

The Asecna Convention does not provide for any transfer of responsibility for air traffic control services from the

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144. Jan Huner, The Responsibility of States for the Provision of Air Traffic Control Services: The Eurocontrol Experiment, p.80.

145. Idem., p.81.

member States to the Organization, nor do the personnel work under uniform conditions of employment.

The management structure of Asecna is similar to that of a public corporation. Under the terms of Article 2 of the Convention the Agency is administered by an Administrative Council, assisted by a Director General, who has authority over the administrative organs of the Agency which are: the administration, three technical departments, (exploitation, infrastructure and meteorology), the accounting department and the General Secretariat. There is also a representative of the Agency in each member State, appointed by the President of the Administrative Council in agreement with the respective ministers in charge of civil aviation.(146) This representation of Asecna is the same as a management organ of a public corporation. Because of the status of the representative he ought to be considered as an international official.(147)

The decisions of the Administrative Council are executive decisions which means that they can be applied without any further consultation with the member States.(148) The nature of the powers of the President of the Administrative Council, Director General and local representatives, is not questioned as they have executive powers.(149) The Administrative Council

146. Article 24 Asecna Statutes.

147. Tancelin, op.cit., p.36.

148. Idem., p.52.

149. Idem., p.51.

does not have regulatory powers, which is an exclusive attribution of each State. Article 5 of the Convention enumerates the financial resources of the Agency which are the charges receivied from the users of the services; execution of contracts based on Articles 10 and 12 of the Convention; the contributions of member States and the subventions. In 1962 Asecna introduced a common route charges system, which actually provides for the main part of the Agency's financing.

The rules for meetings and deliberations of the Council are given by the Statutes.(150) The members of the Administrative Council have equal voting rights, except the President who has a casting vote when opinions are divided. Normally decisions are taken by a majority vote of the members of the Council,(151) and in some cases by a majority of two thirds.(152)

2. The European Organization for the Safety of Air Navigation (EUROCONTROL)

The European Organization for the Safety of Air Navigation (Eurocontrol), was established by the International Convention relating to co-operation for the safety of air navigation signed at Brussels on December 13, 1960, by Belgium, France, the Federal Republic of Germany, Luxembourg, the Netherlands and the United Kingdom. On March 1, 1963, the Convention

150. Article 13, Asecna Statutes.

151. *Idem.*, Article 13(6)

152. *Idem.*, Article 19.

entered into force and established its permanent headquarters in Brussels. The purpose of Eurocontrol is clearly stated in Article 1 of the Convention which says:

> "The contracting parties agree to strengthen their co-operation in matters of air navigation and in particular to provide for the common organization of the air traffic services in the upper airspace".

The reasons these six European States had for the creation of Eurocontrol are varied. Around 1955, with the introduction of jet aircraft in commercial operation which, up to that time, had only been used for military purposes, the structure of air traffic began to change. The characteristics of jet aircraft were high speed and high cruising altitudes, which up to that time, had only been used by military aircraft. The common use of the upper part of the airspace by a great number of civil and military aircraft made it difficult to rely on a pilot's ability to prevent collisions. This raises the question of how it would be possible to ensure the safe and orderly flow of air traffic.[153] "It became obvious that a new organization of the European upper airspace, especially in the areas with high traffic density and severe military co-

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153. "Why European Air Traffic Control Integration", Eurocontrol Journal, June 1965, I. p.5.

ordination problems like the Benelux-Germany region, had to be based on the implementation of an improved route structure irrespective of national boundaries. In order to divide Western European airspace logically, taking into account the major traffic streams and the need to ensure this coordination, it was indispensable to re-organize air traffic control services on an international basis."[154] Article 1(1) of the Convention raises the question of where the upper airspace begins. There is no provision in the Convention in this regard. That definition was omitted because operational practice might necessitate a revision of this boundary, which would require a time consuming amendment to the Convention.[155] The upper airspace has been fixed by a decision of the Permanent Commission composed of representatives from each of the contracting parties, at 20,000 feet Flight Level (FL200) and upwards for the Federal Republic of Germany, the Kingdom of Belgium, the Grand Duchy of Luxembourg and the Kingdom of the Netherlands and at 25,000 feet Flight Level (FL250) for the French Republic and the United Kingdom.[156] The actual field of Eurocontrol is limited to

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154. "Why European Air Traffic Control Integration", op.cit., footnote 153.

155. Huner, op.cit., p.70.

156. R. Bullin, Eurocontrol - A European Organization. Its Structure and Future Prospects, Journal of the Royal Aeronautical Society, vol.69, no.651, March 1965, and Article 3 Eurocontrol Convention.

the control of air traffic for civil aircraft and those military aircraft which conform to the ICAO procedures for the upper airspace of the member States. René Bullin, the Director General of Eurocontrol defined Eurocontrol's terms of reference as follows:

> "Firstly, to create in upper airspace, control zones for air traffic whose limits would henceforth be governed by technical or technological requirements and consequently would be entirely independent of political frontiers.
> Secondly, to collaborate very closely with the military authorities in order to promote the adoption of certain measures and to develop proper methods to ensure the safety and rapid flow of air traffic whilst at the same time making large economies.
> Finally, the new Organization had the task of unifying the control procedures and the rules of the air". (157)

The Agency only exercises active jurisdiction of the upper airspace in Belgium, Luxembourg and the northern section of West Germany.(158) Eurocontrol has, for several years, operated the "Centre Expérimental d'Eurocontrol (CEE)" situated at Bretigny-sur-Orge near Paris to test and evaluate equipment and methods of air traffic control to be adopted in member States. On January 1, 1970, the Agency opened an Institute in Luxembourg where the technical operations staff is trained either in basic or advance courses. At Maastricht, in the Netherlands, the first Eurocontrol air traffic control centre controls

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157. R. Bullin, op.cit., footnote 156.

158. Lawrence Doty, Nationalism Poses Threat to Eurocontrol, Aviation Week & Space Technology, October 20, 1973, p.27.

part of the Organization's area of jurisdiction. A second centre in Karlsruhe (Federal Republic of Germany) is responsible for controlling another part of the area and the one at Shannon (Ireland) ensures a smoother transition for traffic between the continental and oceanic areas.

Structure - To carry out its functions, the Organization is composed of two organs which are:

a) The Permanent Commission of Ministers (The Commission)

b) The Air Traffic Services Agency (The Agency).[159]

The Commission is a deliberative body composed of two representatives of each of the contracting parties, only one of whom has the right to vote.[160] The duties and responsibilities of the Commission are set out in the Convention.[161] The Commission has a double role, first to lay down a common policy on certain matters relating to air traffic control and second to exercise the power of general supervision of the activities of the Agency and decide on its acts as defined in the Convention. Because of the importance of the Commission's work the member States are represented by their Ministers responsible for Defence and Civil Aviation. The Commission has different systems of voting according to the matter in discussion:

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159. Article 1(2) Eurocontrol Convention.

160. Idem., Article 5.

161. Idem., Article 6.

"a) The majority vote seemed to be absolutely essential for recommendations to member Countries. these recommendations seek inter alia to ensure the standardisation of national regulations governing air traffic or, to promote a common policy on radio aids, telecommunications and airborne equipment.
b) However, when it comes to decisions involving important acts and general policy decisions, such as the determination of the configuration of the air space in respect of which air traffic services are entrusted to the Agency, general agreement is indispensable and the decision taken is binding for the contracting parties.
c) The Commission issues the Agency with directives for the determination of the policy to be followed in respect of remuneration for services rendered to user and, where applicable, the approval of the tariffs and conditions of application of charges to be established."(162)

The matters enumerated in b and c require an absolute majority in order to be adopted. The votes are weighted according to the Gross National Product (GNP) of each member State. The weighting is prescribed in a table in Article 9 of the Convention.

The Agency is another body of Eurocontrol; it has operational functions such as organizing air traffic services in the airspace of the contracting States and establishing air traffic control research and experimental centres and schools for the advanced and specialized training of personnel of air navigation services. The administration of the Agency is the responsibility of the Committee of Management, which is composed of two government representatives from each of the member

162. R. Bullin, op.cit., footnote 156.

States.(163) This Committee appoints a Director General, who is the head of the Agency and represents it in legal proceedings and for all civil purposes.(164)

Finance - To fulfill the purpose of its creation the Agency requires substantial financial resources. The appropriate resources for its financial well-being are supplied by the member States(165) within the limits and conditions defined in the Statutes. During the initial period, which was fixed as the first three financial years, States were supposed to apportion all expenditures, operating and investment of the Agency, based on their Gross National Product:

> "Subsequently only the annual contribution of the member States to the investment budget will be assessed on the basis of the G.N.P. criterion; for the operating budget a more complex formula will be introduced. Taking due account of the services rendered to the civil air traffic of each of the contracting parties. To sum up: the operating budget will be divided proportionately into two parts to the services rendered to the following two categories of users: the first includes civil aircraft of non-contracting States and military, customs and police aircraft; while the second includes the civil aircraft of the Contracting Parties. In respect of the first part, the share of each of the member States will be calculated proportionally to the value of the Gross National Product whereas the formula for the second part will be based on the services rendered by the Organization to civil aircraft of each of the member States.

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163. Article 13 Eurocontrol Statutes.

164. Idem.

165. Article 32, Eurocontrol Convention.

> . Expenditure will thus be shared among the Contracting Parties not only according to their contributive capacity, as is the case at present, but also according to the extent of the services which they receive from the organization as users of these services" (166)

Actually the commercial operators pay part of those costs through a uniform system of charges for the use of en route air navigation facilities which was approved in July 1969 by the Permanent Commission. The goal of the Agency was to gradually recover the cost incurred by member States and the Agency. The introduction of such charges was foreseen at the time of the signing of the Convention.(167) Article 28 of the Convention stipulates that in order to carry out its tasks the Agency shall be empowered to construct such buildings and installations which it requires, but should make use of existing national installations and services, whenever duplication can be avoided.

<u>Legal Status of Eurocontrol</u> - To enable the Agency to achieve its aims the member States endowed it with various attributes. In the first place Article 4 of the Convention states that the Agency has: "fullest legal capacity to which corporate bodies are entitled under national law" in their territories. Articles 12 and 13 of the Convention set the competence and procedures to be followed by the Commission in representing Eurocontrol in concluding agreements between the

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166. "Eurocontrol a European Organization", Eurocontrol Journal June 1965-I.

167. Article 20, Eurocontrol Convention.

Organization and any State which is not a party to the Convention but which is desirous of using the services of the Organization, and also with other international organizations and member States. Therefore it can be concluded that Eurocontrol possesses international legal personality.

Under Article 14 of the Convention, the member States entrusted to Eurocontrol the responsibility to render the air traffic services in the defined airspace in accordance with the provisions of Paragraph 2(d) of Article 6 and Article 38 of the Convention.

Eurocontrol is a public international corporation by virtue of its organization, management structure, powers and functions. But the Convention does not describe the Organization as such.

Eurocontrol's Constitution is consistent with Article 83 of the Chicago Convention according to which arrangements made by any contracting State shall be forthwith registered with the ICAO Council. The Eurocontrol Convention has a provisions (Article 42) that states:

> "The Government of the Kingdom of Belgium shall cause the present Convention to be registered with the International Civil Aviation Organization."

CHAPTER V

COMPARATIVE STUDY

SECTION I

Differences and Analogies Between COCESNA, Asecna and Eurocontrol

COCESNA, Asecna and Eurocontrol, are organizations which were created on the basis of "regional cooperation". Various ways of organizing such co-operation may be suggested. The most complete would be to obtain uniformity in the regulations and the organs which provide the services. In this way a large geographical area could be covered without taking into consideration national borders, but only technical requirements. The second way is the one used by the aforementioned organizations. Their co-operation is not perfect and their competence is limited to the territories of the member states where they apply national regulations. In the 1960s when these Conventions were signed, the air traffic services were characterized by the application of certain principles such as the separation of military and civil traffic services; the existence of airways, and the distinction between two methods of flight; instrument flight rules (IFR) and visual flight rules (VFR) the principles of the national sovereignty of the States and the absolute authority of the pilot on board. Some of these concepts are already obsolete. The same comment can be extended to many surface transport concepts which were used in the regulations at that time, i.e. the notion of "route" or the principle "see and be seen" on which the visual flight rules (VFR) are based. The frequency of flights, their altitude and speed demand changes in air traffic systems.

The purpose of this study is to examine the whole system laid down by the Conventions with the juridicial problems arising from the application of the terms of the Conventions. These problems can be studied in relation to international law and national law points of view.

1. The Three Conventions and the Convention on International Civil Aviation

According to the provision of Article 82 of the Chicago Convention the contracting States undertake the obligation not to enter into arrangements and understandings which are inconsistent with its terms. The Conventions are not inconsistent with the goal of the Chicago Convention which is to facilitate air navigation. In order to prove this, it will suffice to examine the statements found in the preamble of the text of the Conventions. The COCESNA Convention opens with the following statement:

> "CONSIDERING: that the cooperation of the Central American States in the sphere of civil aviation, especially since the creation of the Center of Flight Information in Tegucigalpa in October of 1957, has already improved the safety of civil aviation in the region.
> That the use of jet propelled transport planes makes it necessary to strengthen considerably the organization

of air traffic services as well as telecommunications and radio aids to air navigation.
That in order to assure the efficiency of these services, without at the same time placing excessive burdens on the economical resources of the States themselves, it is necessary to avoid duplication of same and seek their rational integration so that the contracting parties would be in a position to meet their international obligations."

Eurocontrol's Convention has a similar statement in its preamble which says:

"Considering that the entry into service and general employment of turbine engine transport, aircraft may give rise to far reaching changes in the organization of air traffic control,
Considering that, from the operational standpoint, modern types of aircraft are characterized: by high speeds, by the necessity, for reasons of economical operation, of being able to make an uninterrupted climb at a high speed to optimum operating altitudes and of remaining at those altitudes until a point as near as possible to the destination of the aircraft has been reached,
Considering that those characteristics imply not only the adaption or reorganization of existing control methods and procedures but also the creation, above a certain level, of new flight information regions organized in whole or in part into control areas,
Considering that, having regard to the rapid progress in the technical development of such aircraft, the control of air traffic at a high altitude can no longer be envisaged within the restricted frame work of national frontiers, in the case of the majority of European countries,
Considering therefore that it is expedient to create an international control organization operating in respect of airspace which extends beyond the limits of the territory of a single State,
Considering that insofar as pertains to the lower airspace it may be of advantage in certain cases to entrust the air traffic services in part of the territory of one Contracting Party to the aforesaid international organization or to another Contracting Party,

Considering moreover that internationalized control presupposes the adoption of a common policy and the standardization of regulations based on the Standards and Recommended Practices of the International Civil Aviation Organization (ICAO), due regard being paid to the requirements of national defence,
Considering furthermore that it is highly desirable to coordinate the action taken by the State in respect of the training of personnel of the air navigation services and in the field of study and research relating to air traffic problems."

The Asecna Convention also contains such a declaration justifying its creation:

"Vu la convention relative à l'Aviation Civile Internationale, signée à Chicago, le 7 décembre 1944 et publiée par décret du 31 mai 1947 et ses annexes.

Article ler

Les Etats signataires conviennent de constituer un Etablissement Public doté de la personnalité morale et jouissant de l'autonomie financière pour assurer les services destinés à garantir la régularité et la sécurité des vols des aéronefs de la circulation aérienne générale dans les territoires des Etats désignés ci-dessous:"

The three statements can be summarized as follows: The organizations seek the improvement of the safety and regularity of civil aviation by means of organs of co-operation, without placing excessive burdens on the economical resources of the States. The organizations so created should be capable of coping with changes introduced by the generalized use of turbine-engine aircrafts in commercial operations. The provisions of Articles 28 and 37 of the Chicago Convention impose certain obligations upon the member States.

All those obligations could be more easily and efficiently performed by international organizations rather than by individual States, such as in the case of COCESNA, Asecna and Eurocontrol, which according to the statements in the preambles of their Conventions were created to improve the safety of civil aviation. Another obligation imposed upon the organizations by the Chicago Convention is one of procedure. The respective provision is in Article 83 which states:

> "Subject to the provisions of the preceding Article, any contracting State may make arrangements not inconsistent with the provisions of this Convention. Any such arrangement shall be forthwith registered with the Council, which shall make it public as soon as possible."

In case any member State makes arrangements not inconsistent with the Chicago Convention, it must forthwith register such arrangements with the Council of ICAO. In regard to this, only the Asecna Convention does not mention any such requirement. The COCESNA Convention, Article 33, clearly states that:

> "This Charter, upon entry into force, will be registered with the International Civil Aviation Organization, which in turn will register it with the United Nations."

Eurocontrol also has a similar provision which is found in Article 42 of its Convention. As I have already mentioned only the Asecna Convention does not have a provision to deal with this matter. The reason it does not have such a provision is that the Convention is of a dual nature. On the one hand it is a co-operation agreement and on the other hand a technical assistance arrangement between France and its former colonies in Africa. At the time the Asecna Convention was signed the African States were not contracting parties to the Chicago Convention, and therefore not bound by it. After these African States became independent and parties to the Chicago Convention, the question of whether they should register the Convention with the ICAO Council arose and, in my opinion, such registration became mandatory because of Article 82 of the Chicago Convention, which is binding on all ICAO members.

2. Management

The management of these three organizations is basically the system used by public international corporations (établissements publics). The simplest and less sophisticated structure of management is the one of COCESNA and Asecna. Both Organizations have only one administrative body which is the supreme and sole authority. In COCESNA it is called the Board of Directors and in Asecna the Administrative Council. There are various organs in the management structure of Eurocontrol which are as follows:

a) The Permanent Commission of Ministers (The Commission);

b) The Air Traffic Services Agency (The Agency);

c) The Committee of Management; and

d) The Director General.

The ~~three organizations~~ have a General Manager (Director General) ~~who~~ is in charge of the day to day operations. The Commission (Eurocontrol) and the Administrative Council (Asecna) have ministerial status, but the Board of Directors (COCESNA) does not, thus its members are the Directors of Civil Aviation in their respective countries.

3. Functions

The operational functions of COCESNA, Asecna and Eurocontrol are the same but the first two have certain additional functions which are unique to them. Their main function is to provide air traffic services to facilitate international air navigation. The provision of such services is one of the obligations undertaken by States party to the Chicago Convention. COCESNA's functions are clearly stated in Article 2(1) of its Convention.[168] This Article says that the service shall be provided in the territories of the contracting States and it makes no reference to airspace, nor does it set limits in regard

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168. See page 41.

to altitudes. Eurocontrol's functions are stated in Article 1 of the Convention.[169] The integration of the services in regard to upper airspace was entrusted to the Agency. Article 3 of the Convention's definition of "air traffic" establishes that the services are available only for civil aircraft and those military, customs and police aircrafts which conform to the procedures of the International Civil Aviation Organization. Beside these functions Eurocontrol has two others, which are research and training.[170] Asecna's functions differ slightly from those of COCESNA and Eurocontrol. The functions are clearly described in Article 2 of the Convention:

> "L'Agence gère les installations et services ayant pour objet la transmission des messages techniques et de trafic, le guidage des aéronefs, le contrôle de la circulation aérienne, l'information en vol, la prévision et la transmission des informations dans le domaine météorologique, aussi bien pour la circulation en route que pour l'approche et l'atterissage sur les aérodromes dont la liste est annexée à la présente Convention."

According to this Article the Agency is responsible for the administration of installations and air traffic services for en route navigation as well as for approach and landing in airports of the member States. The scope of the functions of

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169. *Op.cit.*, Page 82.

170. See page 84.

Asecna in relation to those of COCESNA and Eurocontrol is wide. In COCESNA and Asecna Conventions no distinction is made in regard to lower and upper airspace and the services are not restricted to civil aircraft and those military, customs and police aircrafts which conform to the procedures of the International Civil Aviation Organization. A very important point which is particular to COCESNA and Eurocontrol but not to Asecna, is that in the first two Conventions there is a transfer of responsibility from the member States to the organizations in order that they may fulfill their tasks.

4. Financing

The financing methods of the three organizations could be described as follows:

a) An initial contribution by member States;

b) The use and possession of facilities and operating equipment were given by member States to the organizations;

c) Revenues generated from services rendered by the organizations to users; and

d) Loans or any other resources.

COCESNA's financing system follows this given pattern. The States contributed pro rata with a circulating capital of U.S. $100,000.00 to start the operation of the Corporation and also provided the use and possession of facilities and equipment necessary for the discharge of its functions. The Corporation shall maintain its financial equilibrium. With this in mind it will fix tariffs and conditions for fees to airspace users, which will be subject to the provisions of Article 15 of the Chicago Convention. These fees were imposed at the moment the Corporation began operating. In this way the Corporation should be capable of generating sufficient revenues to operate on a non-profit basis.

Eurocontrol's system of financing is more complicated but basically the same as COCESNA's. In Article 32 of the Convention "The contracting parties recognize that it is necessary for the agency to achieve financial equilibrium and undertake to make available financial resources within the limits and conditions defined in the Statute..." It stands to reason that financial equilibrium must also be maintained when the Agency is assigned tasks not expressly provided in the Convention. The Agency Statutes lay down the financial policy to be followed, indicate how financial equilibrium is to be achieved and provide guidelines for financial management. The Statutes make a distinction between operating and investment budget receipts. This last distinction falls into three broad categories which are:

a) Revenues from Services provided by the Agency;

b) Receipts from charges levied on users of the air traffic services; and

c) Contributions from member States, on a Gross National Product basis and services provided to civil aircraft of each member State.

Investment Budget receipts include the proceeds from loans or any other sources, and the member States' contributions, which are estimated in proportion to their Gross National Products. To insure the financial equilibrium the member States' contributions should be equal to the difference between the total amount of expenditure authorized and the estimated receipts other than contributions.

Eurocontrol operates a Central Route Charges Office which collects charges based on a common route charges system. In July 1969, the permanent Commission approved a uniform system of charges for the use of en route air navigation facilities provided by Eurocontrol member States. The intention of such a system was to gradually recover the costs incurred by the Organization and member States.(171) The idea of introducing such charges had already been conceived at the time of the signing of the Convention. Article 20 clearly states that concept:

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171. Huner, op.cit., p.91.

> "The Agency shall establish, where applicable, in application of the directives of the Commission formulated in accordance with the provisions of paragraph 2(e) of Article 6 to the present convention, the tariffs and conditions of application of those charges which the Organization is entitled to collect from users. The Agency shall submit those tariffs and conditions for the approval of the Commission."

The question which arises here is what percentage of cost of the service provided is to be recovered? A full recovery had originally been planned but this idea was not graciously accepted by the flag carriers of the Eurocontrol members who put pressure upon their national governments. Consequently the initial recovery rate was set at 15% of costs, based on 1969 figures. In 1973 the rate was raised to 30%, based on 1971 costs and in 1975 this rate was doubled based on 1973 costs and in 1977 the rate of recovery was increased to 75%.(172)

The last method of financing to be discussed will be the one used by Asecna. Article 5 of the Convention mentions the financial resources of the Organization which are:

1. The charges received from the users of the service;
2. Revenues from special contracts mentioned in Articles 10 and 12 of the Convention;
3. Contributions of the member States which are determined in the Book of Charges (Cahier des Charges) and
4. Subsidies.

172. Huner, <u>op.cit</u>., p. 95.

The contributions for the financing of Asecna could be divided into the contributions of monetary funds and contributions by provisions of facilities, buildings and infrastructures to render the service. The contribution of monetary funds is regulated in the Book of Charges (Cahier des Charges). Originally France supplied about 90% of the funds. Without any formal compulsion to do so the African States started increasing their initial contributions to support the complete cost of a safe and efficient service.(173) Since January 1st, 1962, a system of levying payment for the use of installations and navigational aids was introduced by Asecna regardless of its general unpopularity. There were three reasons for the creation of this system:

a) The Agency was faced with the need for sources of revenue to operate the service and it was logical for it to seek them;

b) Article 15 of the Chicago Convention entitled the member States to levy charges for the use of installations and route services; and

c) The tremendous load which was the result of the operation of the route installations and aids in the airspace of the contracting parties.

The airspace of the contracting parties of Asecna was overflown by numerous long distance flights which did not

173. M. Louis Sanmarco, Why Asecna, Interavia, 3/1962, p.341.

represent a profitable operation.[174] Asecna had to choose among various methods to levy charges and adopted the following system:

> "Introduction of a charge on each flight, varying according to the weight of the aircraft and proportional to the length of the route flown, with no distinction between the routes of one territory or one region, and calculated to produce a revenue proportional to the cost of the services being operated in the region." (175)

Like Eurocontrol and Asecna, COCESNA has an en-route charges system which is the simplest but not necessarily the best. The users are actually charged U.S. $0.11 cents per mile flown. The Corporation is entitled to collect these charges which are supposed to produce sufficient revenues to maintain its financial equilibrium. With this system the member States are not obliged to make annual contributions. Eurocontrol's member States on the contrary have to make yearly contributions in order to maintain the Organization's financial equilibrium. The prediction of competent aviation experts was that COCESNA's method of financing was not sufficient to support the operations of the Corporation, not because of the quantity of the charges, but because of the reluctancy

174. Jean Macaigne, Asecna in Africa and Madagascar, Interavia, 3/1962, p.342.

175. Idem.,p. 343.

of the airlines to pay such charges for various reasons. Some of the airlines have been in debt to COCESNA for several years and potential methods to compel the carriers to pay was discussed extensively at the 27th meeting of the Board of Directors (held in Tegucigalpa, Honduras, between the 22nd and 24th of November 1977) There is no doubt that this is one of the main problems facing the Corporation. At that same meeting a project for a new system of charges to replace the one in force at that time was presented to the Board by the General Manager. The new system is linked to future investments and the rising cost of the operation of the services. It was approved and it has been in force since January 1st, 1978. These charges are as follows:

a) U.S. $0.40 cents for a message by radiocommunication services.

b) U.S. $0.11 cents per mile flown in navigation services.

c) 25% raise in the rent of voice radio and teletype channels.

d) 45% raise in the rent of teletype equipment. (176)

We can conclude that Asecna, Eurocontrol and COCESNA, tend to seek the recovery of the total costs of the services they provide from the users of these services. The method used by COCESNA is in the forefront of this movement, notwithstanding the problems encountered in the enforcing of such methods.

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176 Minutes of the 27th Meeting of the Board of Directors of COCESNA, Tegucigalpa, Honduras, November 22 to 24, 1977, p. 20 - 21.

SECTION II

The Matters Which are Regulated in the Conventions by National Law

COCESNA, Asecna and Eurocontrol in the fulfillment of their functions, apply not only the rules of the Conventions which created them but also the national laws of their member States. "There may be cases in which an international body corporate adopts a particular system of municipal law as its personal law, or incorporates some part thereof in its personal law, without thereby losing its international character and becoming a corporation subject to the municipal laws in question as such".[177] There is nothing in the law that prohibits an international body corporate from adopting as its personal law, the total or a part of a system of municipal law.[178]

The personal law of an international body may consist of rules created by itself or of systems of municipal laws adopted by the body corporate, or of a combination of domestically evolved rules and adopted law.[179] The matters which are regulated in the conventions by national laws are the following:

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177. C. Wilfred Jenks, The Proper Law of International Organizations, p.7.

178. <u>Idem.</u>, p.8.

179. <u>Idem.</u>

a) The legal capacity;

b) Air traffic services;

c) Cases of expropriation in the public interest;

d) Liability of air traffic services; and

e) Transfer of funds.

In relation to legal capacity Article 4 of the Eurocontrol Convention states:

> "The organization shall have legal personality. In the territory of the contracting parties it shall have the fullest legal capacity to which corporate bodies are entitled under national law...:"

COCESNA is vested with legal capacity(180) as well, which is regulated by the national law of the seat of the Corporation.(181)

The Asecna Convention does not have any provision in relation to legal capacity.

The air traffic services are provided in each member State according to their proper national laws and regulations. Article 17 of Eurocontrol states:

> "For the accomplishment of its task, the Agency shall apply for the purpose of air traffic control the regulations in force in the territories of the contracting parties and in the air-space in respect of which the air traffic services have been entrusted to them under international agreements to which they are parties."

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180. Article 3 COCESNA Convention.

181. Article 1 COCESNA Statutes. The Seat of the Corporation has always been in Tegucigalpa, Honduras.

The Eurocontrol Convention has a second article which is binding upon the Agency. It states:

> "Article 29. International agreements and national regulations relating to the admission to, flight over and security of the territory of the contracting parties shall be binding of the Agency which shall take all the necessary measures to ensure the application of such agreements and regulations."

In the case of COCESNA the articles relating to this matter are Articles 9 and 13 of the Convention. The texts of these articles are very similar to those found in the Eurocontrol Convention. Asecna also applies the national law and regulation to air traffic services [Article 5 of the Book of Charges (Cahier des Charges)]. The Asecna Convention is capable of obtaining a great degree of uniformity in relation to the services rendered, because the laws and regulations of the member States are equal. The member States were former colonies of France and the Mother Country gave them the same laws and regulations.

Another aspect which is regulated by national law is expropriation in the public interest. Article 1[illegible] of the Eurocontrol Convention states:

> "1. The character of public interest shall where necessary be recognized, in accordance with national law and with the consequences which result from the provisions of that law relating to expropriation in the public interest, as regards the acquisition of

> immovable property necessary for the siting of the organization's installations, subject to the agreement of the Government concerned..."

This provision is unique to the Eurocontrol Convention as the other Conventions do not address themselves to this issue. The movement of funds is the fourth matter which is regulated by the national law. Article 23 of the Eurocontrol Convention states:

> "2. The contracting parties undertake to give the organization the necessary authorization for all the transfer of funds in accordance with the conditions prescribed under national regulations and international agreements as applicable...."

Article 18 of the COCESNA Convention contains a similar provision.

The last subject which is regulated by national law in the Convention is the liability of air traffic services. Eurocontrol's Convention provides the following in Article 25;

> "1. The contractual liability of the organization shall be governed by the law applicable to the contract concerned.
>
> 2. With regard to non-contractual ~~liability,~~ the organization shall make reparation for damages caused by the negligence of its organs, or its servants in the scope of their employment, insofar as the damage can be attributed to them. The foregoing provision shall not preclude the right to other compensations under the national law of the contracting parties".

COCESNA's Convention is silent on the subject of liability, nevertheless the corporation (according to Article 5 of the Convention) must be insured for liability to third parties and for damages to installations. Asecna has a provision in its Convention in Article 13 of the Book of Charges (Cahier des Charges) which says:

> "L'Agence devra s'assurer contre les risques d'incendie et réserve faite des dispositions de l'alinéa suivant, contre les risques de recours que les tiers pourraient intenter à l'occasion de l'exploitation des services dont elle a la responsabilité.
>
> En ce qui concerne les risques d'accidents pouvant survenir aux aéronefs au décollage, en vol, à l'atterrissage ou lors de leur roulement au sol et dans lesquels la responsabilité des services de contrôle de la circulation aérienne pourrait être mise en cause, en application de l'article 2 de la Convention, l'Agence appellera en garantie la République Française et les Etats intéressés dans les procédures qui seraient engagées contre elle."

After looking at the different aspects of the Conventions which are regulated by national law I came to the conclusion that the most important aspects are the control of air navigation services and liability to third parties in the operation of those services. Therefore it is worthwhile to make a wider and separate study of them.

1. <u>The National Laws and Regulations are applied to Air Traffic Services.</u>

COCESNA, Asecna and Eurocontrol have similar provisions stating that for the purposes of providing air traffic services they shall apply the regulations in force in the territories of the contracting States and in the airspace in respect of which the air traffic services have been entrusted to them under international agreements to which they are parties.[182] The application of the national regulations to control the air traffic services is not a system unique to these Conventions. Article 37 of the Chicago Convention which represents the public international regime for air traffic services for most of the world's States obliges its member States to undertake collaboration in securing the highest practicable degree of uniformity in regulations, through the adoption of the international standards and recommended practices in all matters in which such uniformity will facilitate air traffic services, but if they find it impracticable they are not obliged to adopte such standards after notification to ICAO.[183] Also Article 11 of the Chicago Convention states that the laws and regulations to be applied to the admission to or departure from its territory of aircraft engaged in international air navigation are those of the contracting States. Therefore a member State can apply its own laws and regulations to control

182. Article 9 COCESNA Convention; Article 17 Eurocontrol Convention and Article 5 Asecna, Book of Charges (Cahier des Charges).

183. Article 38 Chicago Convention.

its air traffic services. This procedure is a departure from the provisions of the Paris Convention, whereby la Commission Internationale de Navigation Aérienne (CINA) approved the annexes to the Convention which became mandatory for the contracting States. The Conventions of COCESNA, Asecná and Eurocontrol also have provisions which state that the regulations relating to the access, overflight and security of the territory of the contracting States shall apply in the implementation of their functions.(184) The last part of Article 12 of the Chicago Convention obliges the contracting States to take measures to ensure the prosecution of all persons violating the applicable regulations. To my knowledge all national legislations have these sanctions against such violators. The Conventions do not require the enforcement of the laws and regulations but member States are obliged to collaborate with their own authorities to facilitate the proper administration of justice and to ensure the observance of police regulations and to avoid any possible abuse of privileges, immunities and exemptions.(185) In the fulfillment of their tasks the organizations have had problems of coordination of two kinds. First, there should be in existence a coordination of the laws and

184. Article 29 Eurocontrol Convention and Article 13 COCESNA Convention.

185. Article 27 Eurocontrol Convention and Article 15 COCESNA Convention.

regulations of one member State with the others; and secondly, if the Conventions have rules which are different from the legislation of the member States. The legislation should be amended to be in accordance with the rules of the Conventions. The coordination of the laws and regulations between member States of one organization may present different degrees of facilitation. For instance there is more similarity in the Laws and Regulations of COCESNA's member States than in Eurocontrol's and there is no difference at all in the Laws and Regulations of Asecna's member States, because they are derived from French Law which was in force prior to the granting of independence.

2. The Liability of Air Traffic Services

Each Convention deals with the problem of liability in a different way. We find that each Convention has created special rules and has adopted some national laws.

COCESNA. Article 5 of the Convention states that the corporation must acquire insurance against third parties liability and against damages to installations used in its operation. As we can see the Convention does not mention any principle of liability. The reason for utilizing this system, might be that the drafters of the document thought that trying to establish a principle of liability in the Convention would be difficult and time consuming and therefore opted for the insurance requirement. However the absence of such an important issue in the Convention, which is not completely replaced by the insurance system, is a major defect of this Convention.

Eurocontrol. Article 25 of the Eurocontrol Convention[186] deals with the liability of the Organization, its organs and its servants, while distinguishing between contractual liability and non-contractual liability. For contractual liability the applicable law will be the lex loci contractu. In the case of non-contractual liability the Convention lays down several principles and also refers to the use of national law. The first paragraph of Article 25, Eurocontrol Convention, is in relation to the contractual liability of the Organization. The application of the national law of the contract concerned may produce results which could be different if the law of another member State was applied to this particular contract. The second paragraph lays down the principle that the Agency is liable in cases of negligence of its organs or servants in the performance of its duties if the damage is attributed to them. The last part of the paragraph compliments the principle, allowing the right to other compensation in the event that such remedies exist in the national laws of the member States.

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186. Op.cit., page 108.

<u>Asecna</u>. The system of liability used by Asecna in a certain way is different from the liability regimes of COCESNA and Eurocontrol. The Convention differentiates between two kinds of damages, those resulting from the operation of the air traffic services, which are mentioned in Article 13 Book of Charges (Cahier des Charges)[187] and the ones which are described in Article 17 of the Book of Charges (Cahier des Charges):

> "Seront à la charges de l'Agence, sauf recours contre l'auteur des dommages, toutes les indeminités qui pourraient être dues à des tiers par suite due défaut d'entretien des ouvrages et installations dont elle a la gestion."

These damages are those caused by the lack of maintenance of the facilities used to provide the services which are administered by the Agency. To deal with liability for damages in the provision of the services the Agency must take insurance similar to that required by COCESNA, but it also has a second recourse which is to implead the French Republic and the other member States implicated in the procedures taken against the Agency. We have to assume that this system is also used in the event of liability for damages as a consequence or a lack of maintenance in the facilities to provide the services.

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187. <u>Op.cit</u>., page 109.

After studying the three systems used by the Conventions to deal with liability we come to the conclusion that there is no uniformity in such systems. This lack of uniformity is not restricted to these particular Conventions, since there are different systems of liability in the laws of the world and because this issue of compatibility of laws has always been a moot point. Therefore we can not expect uniformity in regard to this matter in these Conventions.

CONCLUSIONS

The creation of the Central American Air Navigation Services Corporation (COCESNA) by the five Central American countries to increase the reliability and efficiency of air traffic services in their territories[188] is considered to be a good example of what regional co-operation can accomplish. These developing countries with a common language, heritage and similar historical experiences had to overcome their geographic barriers and differences in political orientation to reach their goal.[189]

Some of the reasons for the creation of such an organization for regional co-operation were: 1) The introduction into commercial operations of turbine powered aircraft, which were capable of flying at very high altitudes and speeds; 2) The increasing density of traffic; 3) The adaptation and the reorganization of the systems of air traffic control in order to provide a service capable of preventing collisions and expediting and maintaining an orderly flow of air traffic; and 4) These five Central American countries are parties to the Chicago Convention, and therefore are obliged to provide the necessary facilities and air traffic services to facilitate international air navigation.

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188. See page 1.

189. See page 3.

The reorganization and provision of such services placed a heavy burden on the economic resources of the States themselves. The appropriate solution was to create COCESNA in order to avoid duplication of costs and to seek rational integration, so that the member States of the Organization could be in a position to meet their international obligations.

The concept of organizing COCESNA as a non-profit public international utility corporation has proved to be the answer to the demand for a flexible organization, capable of undertaking the activities of an essentially technical and commercial nature, where public and private enterprises and traditional international organizations were not suitable.(190)

The transfer of responsibility for the provision of the services from the member States to the Corporation, is complete. But the Corporation continues operating in the facilities and with the equipment provided by member States, as agreed in the Convention. The only change to this policy is the future plan of COCESNA to construct some facilities in Tegucigalpa, Honduras, which is the seat of the Corporation.

In the Constitutional Charter of COCESNA there are some matters which were not properly and clearly resolved, such as the special privileges and tax exemptions of the Corporation; the immunities and privileges for the personnel and the

190. See pages 18 and 19.

liability of air traffic services. The first two items have already been raised by member States and discussed in the meetings of the Board of Directors. They suggested that the easiest solution, from a practical point of view, was to amend the Convention. But any amendment does not seem to be forthcoming in the near future, unless one or more member States boldly take the initiative to press for the amendment to the Convention. Such an initiative is necessary in order to accomplish this task. The matters not covered properly in the Constitutional Charter, such as the special privileges and tax exemptions for the Corporation and the immunities and privileges for the personnel, could have caused problems for the activities of the Corporation, if it had not been for the high spirit of co-operation which existed between the member States.(191)

Given the scope of COCESNA's activities, co-operation has not solved all of the problems and conflicts with which an organization like COCESNA is blessed. COCESNA's revenues have been drained because a private international corporation is actually providing, on a profit making basis, some of the aeronautical telecommunications services, which were exclusively entrusted to COCESNA. This means that the users of the services, mostly national airlines, must pay higher charges because such competition will drive up the cost of the other

191. See pages 34,35 and 38.

services. The Board of Directors has already passed two resolutions to deal with the matter but this action was not sufficient to solve the problem. The Governments of the member States concerned have not paid any attention to the problem and it seems insoluble at this time.[192]

The financing of the operations of the Corporation is mainly based on the charges levied upon the users of the services provided.[193] When the Corporation was created competent aviation experts predicted that such a method of financing was not appropriate, because the users might refuse to pay the charges. Nevertheless, the Corporation had been operating the service to date with that arrangement. On ocassions, the airlines have been reluctant to pay the charges, but they usually do pay the charges as assessed. Recently the debts of the faulting airlines reached high proportions which obliged the General Manager to present the problem to the 27th meeting of the Board of Directors (held in Tegucigalpa, Honduras, between the 22nd and 24th November, 1977). The possibility of forcing these defaulters to pay was extensively discussed. The Board recommended the General Manager to study possible ways to force the airlines to pay their debts. From the different proposals discussed at that meeting, I can con-

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192. See pages 54 and 56.

193. See page 103.

clude that the Corporation will have to take some kind of legal action against the airlines. This is the least desirable but it is also the most powerful recourse one may take in order to recover the debts.(194) The problems of the debts of the airlines are complicated by the fact that higher charges were approved at the aforementioned meeting of the Board and they have been in force since January 1st, 1978.(195)

Regardless of the problems faced by the Corporation, its future is assured. The member States are willing to continue to provide the services co-operatively, because they have seen the economic benefits thereof and are convinced that it is a good way to secure the degree of safety and efficiency necessary for the development of international aviation.

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194. See page 104.

195. Idem.

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ANNEXES

DIPLOMATIC CONFERENCE FOR THE ESTABLISHMENT OF A CENTRAL AMERICAN INTER-GOVERNMENTAL CORPORATION FOR AERONAUTICAL COMMUNICATIONS

CONSIDERING:

That the cooperation of the Central American States in the sphere of civil aviation especially since the creation of the Center of Flight Information in Tegucigalpa in October of 1957, has already improved the safety of civil aviation in the region.

That the use of jet propelled transport planes makes it necessary to strengthen considerably the organization of air traffic sercices as well as telecommunications and radio aids to air navigation.

That in order to assure the efficiency of these services, without at the same time placing excessive burdens on the economical resources of the States themselves, it is necessary to avoid duplication of same and seek their rational integration so that the contracting parties would be in a position to meet their international obligations.

THEREFORE RESOLVES:

To adopt the following:

"CONSTITUTIVE CHARTER OF THE CENTRAL AMERICAN CORPORATION FOR AIR NAVIGATION SERVICES"

Article 1. An institution of public service is hereby created, to be known as the "Central American Corporation for Air Navigation Services," hereinafter called "The Corporation", the objectives of which are set forth in this document. Principal offices will be established in the same city as the Flight Information Center, which offers services to the contracting parties and which at present is operating in Tegucigalpa, D.C., Honduras.

Article 2. 1) The Corporation shall have exclusive rights to provide air traffic services, aeronautical telecommunications and radio aids to air navigation in the territories of the contracting parties;

a) It shall provide services and aids mentioned above as specified in the regional plan of the International Civil Aviation Organization, in the territories of the contracting parties and in such other areas as authorized under international agreement;

b) It may provide to other States, through agreements, the above-mentioned services and aids specified in the regional plan of the International Civil Aviation Organization;

c) It may provide within the territories of the contracting parties, by means of contracts with public or private entities, the above-mentioned services and aids not anticipated in the regional plan of the International Civil Aviation Organization.

2) The Corporation may provide aeronautical services stipulated in the regional plan of the International Civil Aviation Organization, different from those mentioned above, with the written authorization of competent authorities of all the contracting parties.

3) The Corporation shall have the following responsibilities:

a) Study and propose to the contracting parties, based on norms and methods recommended by the International Civil Aviation Organization, the uniformity of national norms for control of air traffic and such measures as might be adopted by institutions responsible for the organization and security thereof.

b) Adopt such measures as necessary for the appropriate training of personnel.

c) Promote and coordinate studies concerning air navigation services and installations, taking into account technical evolution and, as appropriate, propose to the contracting parties any changes in the regional plan of air navigation which should be submitted to the International Civil Aivation Organization, with regard to the responsibilities referred to in this Article.

<u>Article 3</u>. The Corporation shall have legal status, may exercise its rights, contract obligations and be represented

judicially and extrajudicially in the achievement of its objectives, and shall have the character of a public utility.

Article 4. The Corporation shall be administered by a Board of Directors comprised of one representative from each contracting party. Each member shall have one alternate who will act in his absence. The members and their alternates shall preferably be competent authorities in aeronautics, appointed by the contracting party being represented. In order that meetings of the Board of Directors be considered valid, the presence of all members will be required, and its decisions shall be adopted by majority vote. The Board shall establish, by unanimous decision of its members, its internal regulations and such others as are necessary for the proper functioning of the Corporation.

Article 5. From the time activities are initiated, the Corporation must be protected from risks resulting from civil responsibilities with third parties and from damages to installations necessary for its operation, through the contracting, with one or various companies approved by the Board of Directors of appropriate insurance.

Article 6. With regard to activities effected and services established in their respective territories, the contracting parties will provide the Corporation such facilities and privileges as are necessary for the discharge of its functions, and which are offered to international organizations and autonomous and official entities.

Article 7. The contracting parties shall adopt the necessary measures permitting the Corporation to effect whatever operations are necessary in the discharge of its functions, including the designation of radio frequencies.

Article 8. The Corporation shall establish among the States and international organizations the necessary liaison for the discharge of its functions and shall maintain whatever other relations are needed for the proper operation of its services.

Article 9. In the implementation of functions anticipant in paragraph 1), Article 2, the Corporation shall, in the control of air traffic, apply the regulations in effect in the territories of the contracting parties and in all air space which has been entrusted the services of air traffic.

Artcle 10. In discharging its duties of air traffic control, the Corporation shall issue whatever instructions are necessary to the commanders of aircrafts who in turn are under obligation to fulfill same.

Article 11. Competent authorities of the contracting parties shall study the infractions reported in Article 10, committed within the limits of their territories.

Article 12. The Corporation shall communicate to competent national authorities all infractions of air traffic regulations, committed within their jurisdiction.

Article 13. In the exercise of its functions, the Corporation shall respect national laws and regulations as well as international agreements related to the access, overflight and security of the territories of the contracting parties.

Article 14. In order that the contracting parties may insure the application of national laws and regulations as well as international agreements, the Corporation will provide information as requested related to aircraft and any other information it may have available with relation to the case under consultation, regardless of whether or not this has been requested.

Article 15. The Corporation will collaborate at all times with competent authorities of the contracting parties in facilitating the proper administration of justice, insuring the observance of police regulations and avoiding any possible abuse of privileges, inmunities, exemptions and facilities specified in this Charter.

Article 16. In the discharge of its functions, the Corporation will be authorized to construct such installations and buildings as it may require.

Article 17. The Corporation, its assets and income, as well as its acts, operations and transactions authorized by this Charter, shall be exempt from all nature of taxes, duties and other contributions, insofar as permitted by the respective legislation.

The Corporation shall be equally exempt from all obligations related to the collection or payment of all nature of taxes or duties. It will also be exempt from all prohibitions or restrictions on the import or export of anything necessary for its operation.

Article 18. The Corporation may possess any and all kinds of holdings and may open bank accounts as necessary in the discharge of its functions. It will enjoy the most favourable exchange rate.

The contracting parties are committed to grant the Corporation the necessary authority, in conformity with procedures specified in national laws and international agreements which are applicable, in order to effect such transfers of funds as may be needed in the establishment and activities of the Corporation, including the contracting of loans and payment of interest thereon.

Article 19. The personnel of the Corporation will be basically Central American. Under special circumstances, as determined by the Board of Directors, persons of other nationalities may be employed to render technical services, provided these, in addition to the special knowledge or skills which are required, are difficult or impossible for Central Americans to discharge, and acquiring the obligation to train personnel of the contracting party's nationality during a prudential period of time and under their direct supervision.

Article 20. For purposes of the preceding Article, the Corporation is under obligation to make every effort to contract those employees presently in the service of the State, autonomous institutions and private concerns presently providing the services which this Charter grants to the Corporation, who, without affecting their existing work contracts, shall enjoy the same rights established by the respective laws, internal work regulations or collective labour pacts, but not to the prejudice of any such greater benefits which the Corporation might grant the employee. In these cases, labour benefits will be paid proportionately and jointly by the substituted employer and the Corporation.

It is understood that when it proves impossible to contract these employees, for reasons not imputable to them, thus occasioning the termination of their services, and unless they are not entitled to indemnization and other benefits due to termination of their contract at no responsibility to either party in accoradance with the respective labor code, the Corporation will be under obligation to pay the employee these and any other benefits to which he is entitled in conformity with national laws.

Article 21. The contracting parties shall offer foreign personnell contracted by the Corporation the same immigration facilities as those granted foreign technicians in international missions.

Facilities will be agreed upon for the duty-free admission of personal effects and household furnishings of persons employed by the Corporation, as well as for their spouses and members of their families dependent on them for subsistence, when contracted, transferred or when contract is terminated by the Corporation.

Article 22. For the establishment of the Corporation, the contracting parties agree:

1. to contribute, pro rata ,a circulating capital of ONE HUNDRED THOUSAND UNITED STATES DOLLARS (US $100,000);
2. to acquire, if necessary, and concede the use and possession of, at no cost to the Corporation, of equipment listed in the Annex to this Charter, placing each of the contracting parties under obligation to comply with this stipulation regarding equipment described for their respective territories;
3. to provide the use and possession, at no cost to the Corporation, of buildings and installations as well as land on which these are situated, and all other property or furnishings which are directly related to the discharge of its functions.

Article 23. The Corporation shall maintain its financial equilibrium with its own resources, with the exception of contributions from the contracting parties cited in Article 22, and loans mentioned in this Article and Article 24.

With this in mind, it will fix tariffs and conditions for fees to airspace users, and will impose and collect these fees. At the request of the Corporation, the contracting parties will assist in effecting the payment of these fees, which will be subject to the provisions of Article 15 of the International Civil Aviation Agreement.

Article 24. The Corporation may obtain, through loans obtained through national and international financial markets, such funds as are necessary for achieving its objectives. The contracting parties, when agreed unanimously, shall guarantee in equal proportions any loans which might be contracted by the Corporation.

Article 25. Any controversy between the contracting parties or between one or various of the contracting parties and the Corporation, relative to the interpretation or application of this Charter, which cannot be resolved through direct negotiations, will be resolved by an Arbitral Tribunal, comprised as follows: each of the contracting parties shall establish and maintain a current list of three magistrates pertaining to its own Supreme Court of Justice. During a period of six months, effective upon entrance into force of this Charter, this list will be ratified to the Secretary General of the Organization of Central American States.

The Secretary General of the Organization of Central American States, for each dispute, will draw lots from a list of candidates, for choosing the respective arbitrators of different nationalities to compose the Tribunal.

The sentence will be pronounced by a majority, and the case shall be considered closed by all parties to the dispute.

Article 26. The Corporation shall draft its own Statutes, which shall be submitted for the approval of each of the contracting parties through the customary channels.

Article 27. All changes to this Charter shall be for 15 years. It may be extended automatically for successive periods of five years.

Any of the contracting parties may denounce this Charter five years after its entry into force, forwarding ratification to the International Civil Aviation Organization, with copy to the Organization of Central American States. The International Civil Aviation Organization will immediately notify the remaining contracting parties.

The denunciation will become effective one year from the date on which the notification is received.

Article 29. In the event of dissolution, it will be considered that the the Corporation continues to exist until its total liquidation.

This liquidation will be carried to completion by liquidators appointed by the Board of Directors. They shall have the most extensive authority possible in order to liquidate the assets of the Corporation. After liabilities have been liquidated, the remaining balance will be distributed among the participating States in conformity with the unanimous decision of the Board of Directors.

After liquidation has been effected, an agreement will be reached with the host State and other States in which installations of the Corporation are located, as to the possible transfer of all or part of these installations in order to continue providing the service.

Article 30. In case of emergency, the interested governments will consult each other regarding measures to be adopted, taking into account the difficulties which are caused by the application of all or part of the provisions of this Charter.

Article 31. This Charter, after its signature, will be forwarded to the Internationl Civil Aviation Organization, which will forward a certified copy to each of the signatory countries and to the Organization of Central American States.

Article 32. This Chater will be ratified and will enter into force on the first day of the month following the deposit of the instrument of ratification of the fourth contracting party to comply with this formality.

The instrument of ratification will be on deposit with the International Civil Aviation Organization, which will notify the interested parties.

Article 33. The Charter, upon entry into force, will be registered with the International Civil Aviation Organization, which in turn will register it with the United Nations.

Article 34. Any non-signatory State may join this Charter after its entry into force by depositing an instrument of union with the International Civil Aviation Organization. The union of all non-signatory States to this Charter shall be approved by the unanimous consent of the contracting parties and upon conclusion of previous financial agreement between the non-signatory State and the Corporation, whose consent and agreement will be communicated by each of the contracting parties and the Corporation, to the International Civil Aviation Organization. After the fulfillment of the foregoing requisites, the International Civil Aviation Organization will notify the interested parties, and the union will enter into force on the first day of the month following compliance with this formality.

In witness whereof, the Plenipotentiaries of Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua, duly authorized to this effect, sign this Charter in Tegucigalpa, D.C. Honduras, on the twenty sixth day of February, Nineteen Hundred and Sixty.

FOR COSTA RICA:

s) Guillermo Salazar Roldan

FOR EL SALVADOR:

s) Jorge Rovira

FOR GUATEMALA:

s) Rodolfo Mendoza Azurdia

FOR HONDURAS:

s) Lisandro Rosales Abella

FOR NICARAGUA:

s) Alfonso Ortega Urbina

CENTRAL AMERICAN CORPORATION OF AIR NAVIGATION SERVICES

Tegucigalpa, D.C., Honduras, C.A.

"STATUTES OF THE CENTRAL AMERICAN CORPORATION OF AIR NAVIGATION SERVICES"

GENERAL

Article 1. The Central American Corporation for Air Navigation Services, created by the Constitutive Charter signed on February 26, 1960, in Tegucigalpa, D.C., Honduras, to assure the efficiency of services set forth in that document, will be governed by the provisions of the Charter, by general legal principles, and by the laws of the State in which the principal offices and installations of the Corporation are located, provided these are not contrary to the provisions of the Charter and these Statutes.

Article 2. The Corporation shall possess juridicial personality as set forth in the Charter establishing the Corporation and shall have the status of an international non-profit public utility. The members of the Corporation will be those States which have ratified (Article 32) or which have adhered (Article 34) to the Charter.

Article 3. For the establishment of the Corporation, the circulating capital will be ONE HUNDRED THOUSAND UNITED STATES DOLLARS (US $100,000.00) contributed in equal parts by the signatory States. This original capital will be increased proportionally by the acceptance of the Charter by an additional member or members.

Article 4. In order to discharge its function, the Corporation will provide the necessary installations and assure the proper operation thereof, duly taking into account the provisions of paragraph 2, Article 16 and paragraphs 2 and 3, Article 22, of the Charter.

BOARD OF DIRECTORS

Article 5. The administration of the Corporation will be the responsibility of a Board of Directors to be comprised of a representative from each of the contracting parties. For each member there shall be an alternate who replace him in his absence.

Both the members of the Board of Directors and their respective alternates shall be preferably, competent authorities in aeronautics designated by the contracting party which they represent.

Article 6. The Board of Directors will be elected annually by the contracting parties.

Article 7. Each Board member will be elected and designated to remain in his post until the first Annual Meeting after that in which he was elected and until his successor is appointed or elected in the next Annual Meeting, except in the case of resignation or incapacity to perform duties.

Article 8. For the transaction of business of the Corporation, a quorum will be formed by the total members of the Board.

Article 9. The Board will write up the minutes, which will be recorded in special books and will form part of the procedure at all meetings.

POWERS AND DUTIES OF BOARD MEMBERS

Article 10. The Board of Directors will elect annually a President and Vice-President from among its members, both of whom may be reelected. The Manager of the Corporation, whose functions are outlined in Article 14 of these Statutes, will act as the Secretary of the Board.

In absence of the President, the Board will be presided over by the Vice-President; and in absence of the latter, a substitute will be selected from among those present to preside over the Meeting. In the case of ties in voting, the President shall call a recess in order to effect a new voting. If a majority is still not obtained, the matter will be taken up at a future meeting.

The Board may invite to its meeting any person or entity, public or private.

Article 11. The Internal Regulations of the Board shall include provisions related to the following:

a) Frequency of meetings, establishing at least two each year.

b) Form in which meetings are to be convoked, including provisions regarding agenda and nature of the meeting.

c) Travel expenses and subsistence approved for members.

d) Preparation and custody of official minutes. These should be signed by the President and the Secretary.

FUNCTIONS OF THE BOARD OF DIRECTORS

Article 12. Functions of the Board of Directors are to:

a) Determine the policy of the Corporation and its administration.

b) Approve agreements or decisions related to relations with other member states and with international organizations. Adopt decisions with respect to procedures to be followed in conformity with Article 25 of the Charter, in the event of controversy between one or more contracting parties and the Corporation.

c) Make recommendations to the contracting parties with respect to the application of paragraph 2, Article 2 of the Charter, and formulate proposals condidered opportune regarding the provisions of paragraph 3, Article 2 of said Charter.

d) Approve tariffs and rates to be paid by air space users.

e) Approve contracts to be signed in accordance with provisions of Article 2, clauses a) and b) of the Charter.

f) Approve the FINANCIAL REGULATIONS referred to in Article 19 of these Statutes.

g) Approve the Service Code for Corporation personnel.

h) Approve provisions related to commercial transactions and procedures to be followed in invitations to bids, auctions and adjudication of contracts.

i) Approve budgets, statements of account, reports, balance sheets and capital investment programs.

j) Approve the contracting of loans under terms longer than one year or for amounts exceeding US $2,000.00, as well as employees' work contracts in excess of US $5,000.00.

k) Present to the contracting parties each year a detailed report of activities and the economic status of the Corporation.

l) Appoint a Manager.

m) Appoint auditors.

n) Create a Technical Advisory Commission.

FUNCTIONS OF THE PRESIDENT OF THE BOARD

Article 13. Functions of the President of the Board are to:

a) Sign all minutes and documents in connection with resolutions of the Board, together with the Manager who will act as Secretary, represent the Corporation at functions of protocol and others as indicated by the Board.

b) Convoke and preside over meetings of the Board, and sign, together with the Manager, the respective minutes.

c) In the absence of the President, the Vice-President will assume his functions, and in the absence of the latter, a

Board member will be selected to preside over said meeting.

d) As the Board of Directors, is the entity responsible for the administration of the Corporation, the President shall have faculties for insuring the execution of all constitutive laws, regulations and provisions of the Board of Directors, with authority, insofar as the Manager's Office is concerned, to take the necessary steps to assure the proper administration thereof, and to inform the Board of measures adopted.

GENERAL MANAGER

Article 14. The Board of Directors will appoint a Manager for the Corporation and will determine his salary and other working conditions.

FUNCTIONS OF THE MANAGER OF THE CORPORATION

Article 15. Functions of the Manager are to:

a) Represent the Corporation judicially, extra-judicially and administratively in all matters and contracts.

b) Sign documentation, correspondence, statements of account and other papers dispatched or received by the Institution.

c) Provide the Board with such information as necessary regarding the progress of Corporation activities and the operation of the different services of same.

d) Sign, accept, endorse and protest checks, promissory notes, releases, drafts and other credit instruments.

e) Insure the strict compliance with duties and obligations of all employees of the Corporation, imposing such dis- disciplinary measures as appropriate.

f) Propose the creation of positions and select personnel to fill same.

g) Propose to the Board the bond for guaranteeing the responsibility of administrative employees, in accordance with the amount of funds handled or held in safekeeping.

h) Prepare drafts of tariffs, contracts, regulations, commercial transactions, budgets, work programs, investment programs, reports, etc., as well as to prepare balance sheets and statements of account for presentation to the Board for approval.

i) Attend sessions of the Board and inform some of measures adopted by virtue of powers inherent to his position or others which have been granted under special circumstances.

j) Conform to expenses authorized in the budget by the Board.

k) Exercise direct authority over all departments of the Corporation and take such measures as considered convenient for its more efficient operation.

l) Contract technical and administrative personnel and labor, as necessary, conferring possessions of the respective positions or rescinding contracts in accordance with the INTERNAL LABOR REGULATIONS, to be prepared and submitted for approval of the Board.

m) Prepare and submit for approval of the Board the FINANCIAL REGULATIONS OF THE CORPORATION, and, after approved, insure the strict compliance thereof.

n) All such functions, not mentioned in this Article, which guarantee the proper operation of the Corporation.

The Board, in full session, shall determine the conditions under which the Manager may be replaced, temporarily or definitely in the case of absence, physical or mental incapacity, or other justified cause.

TECHNICAL ASSISTANCE COMMISSION

Article 16. The Board will establish a Technical Advisory Commission comprised of representatives of airlines utilizing the services of the Corporation. The Commission will establish in its Internal Regulations, which will be approved by the Board.

Functions of the Technical Advisory Commission will be to:

a) Prepare its own Regulations, in accordance with the functions for which it was created, and this shall be presented for approval of the Board through the Manager of the Corporation.

b) Provide advice to the Board or the Manager regarding technical problems submitted to the Commission for study by either of these. The Commission may also initiate the study of technical problems after first informing the

Board and the Manager of its decisions.

c) Participate, with voice but without vote, in sessions of the Board when invited.

d) Inform the Manager of irregularities observed in the technical services and propose corrective measures considered necessary or convenient. Toward this end, the Commission will exercise an inspecting function with regard to the quality of services offered the users.

e) In the event that the Commission considers that its suggestions for the correction of irregularities or for the improvement of the quality of services has not been sufficiently taken into account, it may present a report for the consideration of the Board, notifying the Manager of the Corporation of such action.

Article 17. The Board shall appoint auditors for the Corporation, whose functions are enumerated in the Financial Regulations of the Corporation. These should be of a different nationality from that of the Manager.

SERVICE CODE OF THE CORPORATION

Article 18. The personnel of the Corporation shall be governed by the Service Code. This Code will include provisions concerning the selection of personnel in order to insure that employees possess the indispensable qualifications for the proper operation and efficiency of the Corporation.

FINANCIAL REGULATIONS

Article 19. Subject to the provisions of the Charter and these Statutes, the Financial Regulations shall establish:

a) Procedures for the preparation and execution of the budget and all matters related to the presentation and intervention of accounts.

b) Precepts governing the conditions under which the Corporation may contract loans.

c) Procedures governing the manner in which advances or contributions will be made available to the Corporation.

d) Regulations to be followed in the payment of employees and contract services.

e) Maintenance of an analytical system of accounting showing the cost of the various services provided and the benefits derived from same.

f) The Financial Regulations will establish the conditions under which the contracting parties will effect payment of all or part of their advances or contributions specified in Article 22 of the Charter and in the Financial Agreements referred to in the first paragraph of Article 34 of the Charter.

BUDGET

Article 20. The budget of the Corporation will be governed by the following norms:

a) All income and expenses of the Corporation shall be provided for in the budget for each fiscal year.

b) Procedures to be followed in the preparation of budget calculations and the method of accounting for control of income and expenses which are not specified in this Article, shall be set forth in the Financial Regulations.

c) The fiscal year of the Corporation shall be the same as the calendar year.

d) The Manager of the Corporation shall submit the draft budget for each fiscal year for approval of the Board no later than September 30 prior to the fiscal year covered by said budget.

e) The budget will be prepared in United States Dollars.

LOANS

Article 21. Following previous approval of the Board, the Manager is authorized to: solicit loans or advances on credits granted the Corporation, from any bank, institution, firm or individual, under terms, contracts or conditions at any time, for any amount, size or form, and shall offer such guarantees as required, with the approval of the Board.

RESPONSIBILITIES

Article 22. The services of the Corporation shall be subject to administrative and technical inspections, at the petition of the contracting parties acting on their own initiative or at the request of the Board of Directors, the President of the Board or the Manager of the Corporation.

Article 23. The Corporation will publish the necessary texts, bulletins and instructions for its more effective operation.

Article 24. The administrative language of the Corporation will be Spanish. Languages to be used in the control operations of air traffic, for which the Corporation will be responsible, will be Spanish and English, but not at the detriment of that which might later be adopted by the International Civil Aviation Organization as an international aeronautical language.

TRANSITORY ARTICLES

1. Effective with the entry into force of the Charter, and in the lapse of two months, an initial budget will be established covering the period included between the date of entry into force and the end of that fiscal year.

11. If the Corporation commences operations on July 1 of a given year or later, a single report will be presented for the remaining months of the year; and the following year the report referred to in paragraph k) Article 12, of these Statutes will be presented, as well as a single budget.

These Statutes and Transitory Articles shall enter into force on the date of their approval.

IN WITNESS WHEREOF, the signatures of the members of the Board of Directors are affixed hereto.

FOR EL SALVADOR	Col. Alcides Candray
FOR GUATEMALA	Alfredor Gemmell
FOR NICARAGUA	Segundo J. Montoya
FOR HONDURAS	Lisandro Rosales Abella.