



ASSEMBLY — 38TH SESSION

ECONOMIC COMMISSION

Agenda Item 41: Economic Regulation of International Air Transport

LIBERALIZATION OF AIR CARRIER OWNERSHIP
AND CONTROL

(Presented by Colombia)

EXECUTIVE SUMMARY

This working paper analyses the advantages and limitations of the liberalization of air carrier ownership and control.

Action: The Assembly is invited to adopt the decision set out in paragraph 3.1.

<i>Strategic Objectives:</i>	This working paper relates to Strategic Objective C — <i>Environmental Protection and Sustainable Development of Air Transport.</i>
<i>Financial implications:</i>	The activities referred to in this working paper will be undertaken subject to the availability of resources in the 2014–2016 Program Budget and/or from extra-budgetary contributions.
<i>References:</i>	<i>Convention on International Civil Aviation (Doc 7300/9)</i> <i>Assembly Resolutions in Force. Resolution A37-20 "Consolidated statement of continuing ICAO policies in the air transport field." (Doc 9958)</i> <i>Report of the Sixth Worldwide Air Transport Conference (ATConf/6) (Doc 1009)</i>

¹ Spanish language version provided by Colombia.

1. INTRODUCTION

1.1 The national criteria relating to ownership and control, based on nationality, were widely accepted when the majority of national carriers were owned by the designating State or its nationals, taking into consideration that they played a major role from a strategic, economic and development perspective. However, alongside the increasing trend of liberalization, privatization and globalization, combined with regional economic integration, new challenges have arisen for the bilateral relations between States and in the regulation of international air transport.

1.2 This context of liberalization and privatization represents a paradigm shift in bilateral relations between States in terms exercising international air rights, which requires cooperation, reciprocity and the application of expanded air carrier ownership and control criteria, principles that were extensively developed in the *Convention on International Civil Aviation*, signed at Chicago on 7 December 1944 and amended by the ICAO Assembly (Doc 7300).

1.3 The Chicago Convention establishes an axiological framework and a set of principles to govern the regulatory system for international air transport “in order that international civil aviation may be developed in a safe and orderly manner and that international air transport services may be established on the basis of equality of opportunity and operated soundly and economically”.

1.4 Moreover, the aforementioned Convention indicates that “it is desirable to avoid friction and to promote cooperation between nations and peoples”.

1.5 Similarly, Resolution A37-20 of the ICAO Assembly, *Consolidated statement of continuing ICAO policies in the air transport field*, considered that “the strict application of the criterion of substantial ownership and effective control for the authorization of an airline to exercise route and other air transport rights could deny many States a fair and equal opportunity to operate international air services and to optimize the benefits to be derived therefrom”.

2. ANALYSIS

2.1 Maintaining the traditional criterion based on nationality for the designation and authorization of airlines runs contrary to the process of liberalization. It is accepted as a general rule that each State is entitled to liberalize air transport in accordance with its own criteria and at its own pace, but the traditional arrangement, due to other States having the right of refusal, prevents a State that decides to liberalize more quickly from doing so with regard to designating airlines for granting access to the markets.

2.2 It is important to determine whether it is necessary to maintain an economic link between the airline and the designating State (including the "head office or place of incorporation") in circumstances where the ownership and control of the airlines are liberalized on a national or multilateral level. It is proposed that the economic link could be removed completely, with control of operational safety and aviation security regulations being maintained as the sole link between the designating State and the airline.

2.3 The process of liberalizing the ownership and control of air carriers implies certain benefits, such as greater access to capital markets, which would allow airlines to establish more extensive networks through mergers, acquisitions or alliances, as well as greater competitiveness and a greater variety of services on the market, which would translate into benefits for consumers. There are also certain risks, such as the possibility of "flags of convenience" where no effective regulatory measures

exist to prevent them, the potential deterioration of operational safety and aviation security standards when greater importance is attached to achieving commercial results, and a possible flight of foreign capital, which would result in less stable operations and practices that could be contrary to fair competition.

2.4 In addition, the Sixth Worldwide Air Transport Conference widely recognized the benefits of liberalizing air carrier ownership and control and the need to adapt the current regulatory system to the needs of the 21st century.

2.5 It was agreed that ICAO should lead this liberalization process and that due importance should be attached to operational and aviation safety, as well as the interests of all those involved, including issues such as employment and the need for a gradual and progressive change.

3. ACTION

3.1 The Assembly is invited to request the Council to develop a Model International Agreement for States to liberalize airline ownership and control, for presentation to the 39th Session of the ICAO Assembly.

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