



International Civil Aviation Organization

WORKING PAPER

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**English, French
and Spanish
only¹**

ASSEMBLY — 36TH SESSION

ECONOMIC COMMISSION

Agenda Item 40: Regulation of international air transport services

AIR CARRIER OWNERSHIP AND CONTROL

(Presented by the International Transport Workers' Federation)

EXECUTIVE SUMMARY

This paper argues that the benefits of liberalization of ownership and control regulation are questionable, and that the economic problems that could arise are insufficiently addressed. Liberalization risks weakening the connection between aircraft operations and their safety and economic supervision by formalising a variety of differing designation and authorisation standards. Additionally, reservations about its impact on sovereignty and the ability to defend the national interest need to be raised.

Action: The Assembly is invited to:

- a) consider that the national ownership and control criterion should be retained in the interest of stability, reliability and economic security of air transport provision;
- b) consider that States should retain effective regulatory tools to ensure that the public interest dimension of air transport services can be met;
- c) request the Council to undertake further work to identify measures by which safety dumping and security dumping might be prevented.

<i>Strategic Objectives:</i>	This Working Paper relates to Strategic Objectives A, B and D. It will further Strategic Objectives A and B by maintaining and develop ownership regulation and complement Strategic Objective D by studying trends to support sustainable aviation.
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<i>Financial implications:</i>	The work outlined in this working paper may need to be undertaken with resources available in the budget 2008-2010.
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<i>References:</i>	
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1. BACKGROUND

1.1 At the heart of the ITF's concerns regarding proposals to liberalize ownership and control criteria are three issues:

¹ English, French and Spanish provided by ITF.

- a) avoidance of “flags of convenience” through maintenance of the link between the nationality of ownership of the carrier and nationality of the safety and security supervisory authority;
- b) the impact of liberalization on the ability of governments to pursue their national interests on the basis of sovereignty and reciprocity; and
- c) the practical economic consequences of this measure at a time of continuing global instability in the aviation industry.

2. **MAINTAINING THE LINK BETWEEN SAFETY AND SECURITY REGULATORY SUPERVISION AND NATIONALITY OF OWNERSHIP**

2.1 Broadening the ownership and control criterion raises legitimate concerns about the possible development of aviation “flags of convenience”. The ITF, as a multi-modal transport organisation has intimate experience of the consequence of flagging-out in the maritime sector.

2.2 At the root of the problem of maritime flags of convenience is the weakness of the definition of “genuine link” contained in the United Nations Convention on the Law of the Sea (UNCLOS). The ITF fears that a new wording of “principal place of business” in aviation will be a step in the direction of the loose regulation that so bedevils the maritime industry.

2.3 The concept of “principal place of business” is ambiguous. For example, a carrier from one State with a significant “foreign” crew base and ground station in another State, would possibly - subject to local incorporation - meet theoretical criteria and would be able to effectively transfer regulatory control of such a subsidiary to a State which is neither the country in which the carrier is beneficially owned, nor has its headquarters. Any definition of “principal place of business” must be tied to the place of beneficial ownership unless we are to see a situation in which stand-alone subsidiaries of global airlines are able to “cherry-pick” whether to be subject to local or home-based regulation and supervision.

2.4 For the time being, selectivity of safety and security jurisdictional authority has been largely prevented by the existing ownership and control criterion.

2.5 The undoubted willingness of some operators to be selective about regulatory jurisdiction when given the option, raises concerns regarding the recognised limitation on the capacity and resources available to national aviation safety regulatory authorities to effectively oversee global carriers operating in large numbers of countries. Even within the European Union, where a common regulatory framework allows carriers with an Air Operator Certificate issued by one Member State to operate freely within any other, problems are emerging. Where, for instance, does effective oversight lie with a carrier registered in Iceland on the basis of a “virtual” headquarters, operating flights from the United Kingdom to third countries and using personnel employed by a manning agency in the Channel Islands? Such arrangements are a growing phenomenon.

2.6 Of course, specific safety and security clauses within bilateral and multilateral air service agreements are to be welcomed. Nevertheless, a patchwork of requirements in the multitude of such

agreements cannot be an effective substitute for the global harmonisation airworthiness and operational requirements and the development of minimum global personnel standards.

2.7 Only with a global framework of requirements (rather than broad standards), backed by consistent enforcement and with ICAO as the overall safety audit for such provisions, will it be possible to protect against the natural tendency of transnational enterprises to pick and chose the most business-efficient regulatory jurisdictions. Until such a time as a detailed global framework is in place, broadening the ownership and control criterion risk opening the airline sector to social dumping, safety dumping and reduced oversight.

3. PRESERVING RECIPROCITY AND SOVEREIGNTY OF THE AVIATION INFRASTRUCTURE

3.1 Underpinning the nationality provisions in air service agreements has been the recognition of the strategic importance of the economic, development, and social functions of aviation. Nationality requirements (and the powers of designation and authorisation) have been a tool by which States have been able to ensure that air service provision meets the interests of all their stakeholders, including shareholders, passengers, employees, and dependent industries and communities.

3.2 This is fundamentally an issue of national economic security and autonomy and in some States is also tied to questions of defence security and national emergency resources.

3.3 Air carriers, of course, operate in a commercial environment, provide commercial services and are subject to market disciplines. However, air transport services differ from many other commercial activities in terms of the impact of interruption, disruption or loss of service on the wider economic, social or developmental health of nations. It is for this reason that they are regulated differently to non-essential commercial activities.

3.4 The obvious danger of permitting foreign ownership of designated carriers is that this would weaken the influence of the designating State over this public interest dimension of its air transport services. The likeliest losers in such a situation are developing nations or those with a modest existing air carrier infrastructure.

4. THE ECONOMIC CONSEQUENCES OF BROADENING THE OWNERSHIP AND CONTROL CRITERION

4.1 There is also the assessment that liberalizing air carrier ownership and control enables carriers to a wider access to capital markets, reduced reliance on government support, more extensive networks through mergers and acquisitions, improved economic efficiency, and more competitive carriers.

4.2 Investment is certainly an issue for many carriers, and a very real concern for many aviation employees. But a majority of the world's carriers are already listed in national stock markets, and the principal problems of the market capitalisation of the sector come from poor share and dividend performance. Promoting stable and ordered growth in the industry in a low-risk (or predictable risk) environment would be a better means of promoting access to future investment.

4.3 A reduction in reliance on government support is also often cited as a benefit accruing from liberalization of the ownership and control criterion. There is nothing in the existing economic regulatory regime to inhibit divestment or privatisation where this has been decided. Such measures are available without any change to the existing ownership and control rules.

4.4 National ownership and control criterion acts as a barrier to the global consolidation of the airline industry. But it seems unwise to open the doors to such international takeovers without specifying means by which the adverse consequences of concentration can be addressed. At a very time when a broad range of economic opinion is beginning to question the benefit of global mergers in view of their poor or negative effects on share values it would be wise to have some effective regulatory tools in place to manage such consequences.

4.5 Last, breaking the link between nationality and designation risks reinforcing this bad habit by promoting growth through acquisitions and takeovers and by permitting a global free movement of aviation capital which could see relocation of activity to the most commercially conducive (e.g. lowest cost) locations. As long as it fails to address how such a process can be managed in a way that ensures the right to participation of all nations, protects the public interest functions of aviation, and prevents social dumping, security dumping and safety dumping, it should not be pursued.

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