

To: Panel Members and Observers
From: Chairman of Air Transport Regulation Panel

I am transmitting for your review the Report of the Working Group on liberalization of air carrier ownership and control (which may also be downloaded from the ATRP Web site at: www.icao.int/atrp). I apologize for not being able to provide the report in other working languages due to the longer time needed for translation by the ICAO Secretariat.

With regard to the action by the Panel on this report, given the extremely tight schedule for the Secretariat to prepare the documentation in time for the Air Transport Committee's meeting (during the week 14-18 October 2002), I propose that the Panel note the report of the Working Group and transmit it as an Addendum of the ATRP/10-Report to the Air Transport Committee for consideration. Since the Working Group's report has already been sent by the Rapporteur to most of you for comment during the drafting phase (it has also been posted at the ATRP Web site), which greatly facilitated our current exercise, I will assume that the Panel has agreed to the action I proposed above unless I hear otherwise before 19 September 2002. Please send all your responses to this message directly to the Secretary who coordinates our communication (Mr. Yuanzheng Wang, E-mail: ywang@icao.int; Fax: +1-514-954 6744).

I would like to take this opportunity to thank the Working Group, and its Rapporteur Mr. Chris Stamford in particular, for the excellent work done. My thanks also go to all the others who contributed to this work.

H. P.T. de Jong
Chairman
16 September 2002

**REPORT OF THE AIR TRANSPORT REGULATION PANEL
WORKING GROUP ON AIR CARRIER OWNERSHIP AND
CONTROL SEPTEMBER 2002**

INTRODUCTION

The tenth meeting of the International Civil Aviation Organization (ICAO) Air Transport Regulation Panel (ATRP) was held at the Headquarters of the Organization in Montreal from 13 to 17 May 2002.

At Agenda Item 2(a) (Ownership and Control) at that meeting, the Panel discussed the text of a draft bilateral designation and revocation clause prepared by the ICAO Secretariat. The Panel agreed that, in order to encourage wider and more immediate application of this and other options as part of the general pursuit of progressive regulatory liberalization, further work on this agenda item will be carried out by a working group (the membership is below) on coordinated action by States to liberalize international air carrier ownership and control with the following membership and terms of reference:

TERMS OF REFERENCE

Drawing on all relevant material, including existing ICAO guidance, the working papers and discussions of the tenth meeting of the Panel and subsequent suggestions from Panel members and observers, the working group will:

- 1) identify reasons why States might wish to consider a coordinated action to liberalize international air carrier ownership and control;
- 2) formulate options for States that wish to undertake a coordinated action to liberalize international ownership and control, including options for the coordinated implementation by States of the above proposed Article; and
- 3) provide a report to the Panel in time for it to be available for the final preparation of the Fifth Worldwide Air Transport Conference (ATConf/5).

Panel member from Australia (Rapporteur)

Panel member from Chile

Panel member from Germany

Panel member from India

Panel member from Japan (subsequently withdrew)

Panel member from Saudi Arabia

Panel member from Senegal

Panel member from the Netherlands

Panel member from United States

Observer from International Air Transport Association (IATA)

Observer from the European Community (EC)

The Panel members from Switzerland and Canada requested that they be included in the working group and, after discussion with the Chairman of the Panel, took part as “friends of the Rapporteur”.

Submissions and comments have been received from the Panel members from: Australia; Brazil; Canada; Japan; The Netherlands; Senegal; Switzerland; The United Kingdom; and The United States, and from observers from: The European Commission; and IATA;

The Report of the working group follows.

“ ...

THEREFORE, the undersigned governments having agreed on certain principles and arrangements 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;

Have accordingly concluded this Convention to that end.”

Preamble of the Convention on International Civil Aviation signed at Chicago on 7 December 1944

INTRODUCTION

International aviation restrictions make it difficult for airlines to operate like other businesses

International aviation differs from most other industries because of the special nationality-based restrictions placed on the ownership and control of airlines. These restrictions, and the web of bilateral air services arrangements in which they are placed, were originally founded on the basic principle that a nation State retains sovereignty over its airspace. With few exceptions States require that airlines which are established in their own territory, and which they license, should be owned and controlled by their own nationals.

The primary aim of this restriction has been to limit the benefits of bilateral air services agreements to citizens of the contracting parties. This has underpinned the development of national airlines, through which many States have chosen to establish air transport services. Nationality-based restrictions on the ownership and control of airlines also ensure that the beneficiaries of trade in bilateral air services rights are clearly identified, which greatly reduces the possibility of an inadvertent trade in unreciprocated benefits. Substantial ownership and effective control rules have also provided a convenient link between the State and an airline for identifying those responsible for safety and security matters and avoiding “flags of convenience”. Finally, national defence and economic development considerations are continuing factors in some cases.

However, as the airline industry has developed and matured, an increasing number of States are finding these restrictions to be anomalous, particularly in a broader context of increasing economic globalization.

The pressures that have prompted firms in other industries to expand internationally through merger or take-over of foreign companies, or to establish themselves in foreign States in order to achieve efficiency gains, also apply to aviation. Indeed aviation is by its very nature an international business. An increasing number of States are responding to this pressure by exposing their airlines to market forces, and in many cases, privatizing them. Airlines themselves are also responding through seeking increased efficiency and extending their global reach through alliances.

Airlines are, however, prevented from responding to this pressure in the same way as other businesses by the aviation-specific inward investment rules applied by most States.

At its broadest level, therefore, the purpose of liberalizing airline ownership and control provisions is to place aviation on the same footing as other industries, and to enable an efficient allocation of resources across the whole economy.

Liberalization carries both risks...

Liberalizing ownership and control carries its own risks that need to be addressed as States consider their options for change. ATRP members and observers have noted that:

- the injection of foreign capital may lead to less stable operation of airlines as it tends to be more mobile, flowing in and out of particular sectors of the global economy as it seeks the best return;
- there is a risk that, with a diffusion of international airline ownership and increasing emphasis on commercial outcomes, safety and security standards may potentially deteriorate and the potential for “flags of convenience” may increase; and
- the promotion of mergers and acquisitions on a global level has the potential to lead to global market concentration, which will lead, particularly in the absence of competition policy, to reductions in consumer benefits and to a reduction in the ability of national airlines to operate on the basis of equality of opportunity.

...and opportunities

ATRP members and observers also noted that liberalizing ownership and control does open up opportunities, for international airlines and the governments that designate them, that are currently unavailable, and identified two related effects. Firstly, it has the potential to improve the economic efficiency of the airline industry by:

- strengthening competition in international aviation markets by increasing, both in terms of numbers and variety, the pool of possible competitors in any given market. This in turn has the potential to lead to efficiency gains feeding through into consumer benefits and improved global economic welfare;
- permitting airlines to build global networks through mergers, acquisitions or alliances as they see fit, subject only to normal competition policy. This may provide a more secure base for airlines to exploit their strengths in the longer term;
- providing greater scope for in-depth integration of activities and effective management control which may be superior to the potentially unstable alliance arrangements presently observed; and
- providing airlines with wider access to capital markets that ought to result in their being able to obtain capital more cheaply.

...and the potential for reducing reliance on government support while enhancing safety and security

This last point leads to a second potential effect of liberalizing ownership and control identified by ATRP members and observers: the potential for reduced industry reliance on debt or subsidy.

In a notoriously cyclical industry, debt is a risky method of financing over the longer term. This risk also increases the cost of the capital that is available to airlines as investors put a premium on capital they are willing to provide to an industry with systematically high levels of debt. As a result, governments are frequently called on to step in and bail out their airlines.

The aviation industry is technically advanced, capital intensive and requires continuing investment to maintain its capital base. As the cost of operating international airlines continues to rise, governments are less and less able to mount this sort of investment without adversely affecting other objectives for government spending, like health and education.

A pool of under-capitalized, debt-dependent operators with limited commercial flexibility and access to international capital markets in an industry that is notoriously cyclical, places increasing burdens on States. Enforcement of *de jure* barriers to cross-border investment contributes to this under-capitalization and an inefficient allocation of resources.

ATRP members and observers have noted that this may have serious consequences, not only for participation, but potentially also for safety and security and could jeopardize important ICAO initiatives as under-capitalized airlines will find it harder to meet higher safety and security standards.

ATRP members and observers stressed the paramount importance of maintaining adequate safety and security oversight regardless of changes in ownership and control arrangements.

Substantial ownership and effective control may be less relevant for some carriers...

At the other end of the spectrum, ownership of some large airlines has become increasingly diverse, and some are approaching the point where homeland nationals hold a bare majority of shares. This also raises the question of whether the ownership criterion, as distinct from some other form of control, remains universally relevant.

The judgement on whether to liberalize ownership and control provisions is a matter for individual governments to make, and...

The judgement about whether benefits of liberalizing ownership and control provisions outweigh the risks is a matter for individual States to determine, based on their national interest.

Alternatives to substantial ownership and effective control are not new...

Alternatives to substantial ownership and effective control, which:

- maintain an economic connection other than substantial ownership and effective control between the designating party and the airline; and
- ensure that responsibility for the regulatory control of airline operations is clearly identified; while
- allowing freer access to foreign capital

have been around for some time.

ICAO General Assembly Resolution A24-12 (superseded by A32-17) urged Contracting States to accept the designation of airlines owned by one or more Developing States belonging to a regional grouping. ICAO has also promoted “principal place of business” as a preferred designation model (state letter SP38/1-97/58 of 27 June 1997). As recently as the International Air Transport Association Annual General Meeting (IATA

AGM) in Madrid in 2001, the President of the ICAO Council indicated his support for a move away from substantial ownership and effective control:

“...in short, air carrier ownership and control vested in a single State or its nationals is an anachronism in the global economy and liberalization of ownership and control provisions a necessary precursor of widespread liberalization”

Circumstances pertaining to particular airlines have also led to practical alternatives to substantial ownership and effective control. Air services arrangements with Hong Kong Special Administrative Region (SAR) and Macau SAR have long featured “principal place of business” as a criterion for designation. The three Scandinavian countries have an arrangement with their bilateral partners regarding substantial ownership and effective control provisions that permit a broader capital base for Scandinavian Air Systems (SAS).

Community interest carriers like Gulf Air also operate as designated international airlines under a flexible interpretation of substantial ownership and effective control provisions that permit a broader capital base.

Within the European Union (EU), the links between ownership, the regulatory home of the airline and internal traffic rights have been broken with the creation of “community carriers”. These are airlines that are majority-owned by the Economic Commission (EC) nationals and which hold an aeronautical operational control (AOC) from the EU Member State in which it has its principal place of business. An agreement extends this system to cover Norway and Iceland in addition to the 15 EU member states. An EU/Switzerland agreement, which also covers ownership, came into force earlier this year.

The 2001 Multilateral Agreement on the Liberalization of International Air Transportation, signed by the United States, New Zealand, Brunei, Chile and Singapore, and later by Peru, also dispensed with the ownership criterion for accepting designations of foreign carriers, replacing it with principal place of business (including incorporation), but retained the effective control criterion.

It is important to note that these examples of liberalizing ownership and control have taken place without conflicting with the obligations of the parties under the Chicago Convention or undermining the nature of international air transport.

There has also been discussion on whether the economic connection should be dispensed with altogether, leaving regulatory control of safety and security as the only link between the designating State and the airline. IATA has gone further in strongly advocating that any airline might be designated under an air services agreement, provided that the party accepting the designation is satisfied that the Air Operator's Certificate of that airline is granted by an authority that is acceptable to it.

...but have not supplanted traditional substantial ownership and effective control clauses

Nonetheless, of the 225 bilateral agreements registered with ICAO between 1993 and 1999, 193 retain substantial ownership and effective control as their designation criterion.

FIRST TERM OF REFERENCE:

Identify reasons why States may wish to consider a coordinated action to liberalize international air carrier ownership and control

States have the sovereign right to set their own agenda for liberalization

Air services agreements are an expression of the sovereignty of individual States and each State has the right to pursue liberalization at its own pace in the direction of its choice. This includes accepting the designation of foreign airlines with liberalized ownership and control, including the decision to waive traditional ownership and control criteria when receiving designations of foreign carriers in particular circumstances.

The decision about whether an international airline should be permitted under its domestic law to move to an ownership and control regime that allows it greater access to international capital is also ultimately one for its designating State.

As part of its right to pursue aviation liberalization at its own pace, a State may independently choose to relax ownership and control requirements for its own airlines, and/or for accepting the designation of foreign airlines. Options for these States may include case-by-case decisions or unilateral statements of policy.

The results of ICAO's survey of States' policies and practices concerning air carrier ownership and control showed that States rarely take regulatory action against a designated airline which had received authorization but later ceased to meet the national ownership and effective control requirement under the relevant bilateral agreement. However, such waivers have generally been granted on a case-by-case basis with little publicity, and thus have provided only modest assurances for cross-border investors.

States can also amend the ownership and control provisions in their bilateral agreements, or agree on a flexible interpretation of them where they are able to find bilateral partners willing to do so.

States who choose to act independently within the bilateral system have options already available to them for modifying or interpreting ownership and control provisions either unilaterally or by bilateral agreement. ICAO has played an important role in further refining those options, particularly through the work of the ATRP after ATConf/4, and in providing a forum in which they can be discussed. ATRP members and observers have noted that it is important that this work also continue through consideration at ATConf/5.

...but substantial ownership and effective control can strongly influence that agenda...

However, the right of each State to determine the extent to which it wishes to liberalize ownership and control of its own airlines can be constrained by the possibility that foreign ownership could create uncertainty about the airline's ability to operate under the existing web of bilateral agreements. Although each bilateral partner is free to waive the right, the risk that one or more partners will nevertheless reject the designation of the airline with foreign ownership and control can be sufficient to prevent States liberalizing their own rules on ownership and control and prevent airlines from seeking foreign investment.

It is this uncertainty over whether bilateral partners will reject a designation that affects decisions on liberalizing ownership and control. States need a better sense of the willingness of their bilateral partners to accept an airline with liberalised ownership and control.

...which can be facilitated by coordinated action

Liberalizing domestic ownership and control rules can become more attractive for each State if it can see a critical mass of its bilateral partners committing to not rejecting the designation of its airlines. ATRP members and observers have noted that this critical mass is unlikely to develop quickly in the absence of coordinated action, as individual renegotiations of air services agreements will take a considerable amount of time. A core group of important markets making that commitment may therefore create momentum for liberalizing inward investment and provides an important reason for coordinated action.

IATA has observed that airlines are facing a complete reappraisal of business models and speed and flexibility are fundamental in considering changes to the ownership and control regime.

Independent action to liberalize ownership and control arrangements remains a valid option for increasing airlines' opportunities, economic efficiency and overall public benefits. However, coordinated action offers the opportunity to expand these benefits on a broader, more secure basis.

SECOND TERM OF REFERENCE:

Formulate options for States who wish to undertake a coordinated action to liberalize international air carrier ownership and control; including options for the coordinated implementation by States of the above proposed arrangement

Coordinated action can provide a multilateral guarantee of market access

Like-minded States that wish to take coordinated action not to reject the designation of foreign airlines on the grounds of liberalized ownership and control will find it easier to do so if they can develop a multilateral guarantee of market access for these airlines to operate successfully without risk to their designations.

At its simplest, a multilateral guarantee of continued market access would be an arrangement between like-minded States to interpret the economic designation criterion of their bilateral agreements to encompass airlines with liberalized ownership and control designated either by:

- any State, or
- by another party to the guarantee.

This would mean that the airline operating under the designation rules set by the guarantee must:

- still be qualified to meet the conditions prescribed under the laws, regulations and rules applied to the operation of international air transportation by the State considering the application or applications; and
- still hold the necessary operating permits issued by the designating and receiving States.

The State designating the airline must also continue to provide oversight of safety and security in accordance with standards established by ICAO, or ensure that it is provided.

All other elements of the relevant bilateral agreements could remain unchanged allowing the party authorizing the designation to continue to control the overall access of the airline to the market defined by the agreement through negotiated traffic rights. Parties may, however, want to review the nature of their interlocking bilateral arrangements and the quality of market access available under them, particularly if they are interested in broader efficiency gains.

A more comprehensive guarantee that removed the requirement for any link between the airline and the designating State may require further amendment to the air services arrangements under which it is applied.

It is also important to note that, in certain circumstances, States may in effect be waiving a right to action under the International Air Services Transit Agreement (IASTA), which presupposes that ownership and control of an “air transport enterprise” be vested in the nationals of a Contracting State, although not necessarily the State that designates the airline. The right to take action under IASTA, because the ownership and control of an airline is not vested in the nationals of a Contracting State, is a reserved right, like the right to deny designation under a bilateral air services agreement.

This guarantee can be offered reciprocally or non reciprocally...

ATRP members and observers have noted that, while coordinated action by like-minded States not to reject the airline of any State would help provide momentum to global liberalization, a unilateral waiver without reciprocity might lead to problems where another State is able to take advantage of the guarantee without itself liberalizing.

...and there are a number of ways in which reciprocity might be implemented

It seems more likely that liberalization could occur between parties to the guarantee, and ATRP members and observers have suggested a number of qualifications on the way in which the guarantee could be applied that would maintain reciprocity of opportunity for airlines of participating States while helping to fuel momentum for liberalization. These include:

Reciprocity on authorization:

- a) The party designating the airline has itself adopted similarly liberal rules of authorization;
- b) The airline is controlled by nationals of a State that has adopted similarly liberal rules on authorization;

Reciprocity on inward investment opportunities:

- c) The Party accepting the designation is permitted to take an equivalent degree of ownership and control of airlines in the territory of the designating party to that of the airline in question;
- d) The Party accepting the designation is permitted to take an equivalent degree of ownership and control of airlines in the territory of the State with majority ownership and control of the airline being designated; and

Reciprocity based on common aims for liberalization:

- e) The airline is controlled by nationals of a State that has liberal agreements with parties to the guarantee.

These options would form the basis for a discussion on arrangements for a reciprocity-based approach to coordinated action on liberalizing ownership and control.

There are two broad approaches for offering a guarantee of market access...

There are two broad ways in which this guarantee of market access can be offered: either through some legally binding instrument, or through non-binding letters of comfort or a statement of common policy. A legally binding instrument would offer a greater degree of certainty for States considering liberalization of their domestic ownership and control requirements. A mechanism based on letters of comfort or a statement of common policy may be easier to implement in the shorter term.

...a legally binding instrument...

A legally binding instrument might take the form of a protocol to an existing instrument, like IASTA, or stand on its own as a multilateral agreement open for signature. This option could become effective for a relatively small number of signatories quickly, and would be open to accession by additional parties at any time. The instrument may also take the form of exchanges of diplomatic notes between like-minded States offering the guarantee of market access on a reciprocal basis as part of their bilateral arrangements.

One further suggestion has been to complete the vision of the Chicago Conference of 1944 and revive the possibility of a larger stand alone multilateral treaty, with liberalization of substantial ownership and effective control as one major element. It was suggested that this treaty would be the best solution in the longer term as it provides the greatest legal certainty and, if sufficient support can be found for it, the most binding political commitment.

...or through a commitment that is not legally binding...

The other broad approach is for like-minded States to stop short of a legally binding guarantee and instead offer an undertaking severally or jointly that they would be willing to consider accepting the designation of an airline with liberalized ownership and control. This would give like-minded States some discretion in the circumstances under which they would accept the designation of airlines with liberalized ownership and control.

Where this involves accepting the designation of a community interest carrier, or, as has been suggested by IATA, a carrier with no economic connection to the designating State, the text may also need to cover a written guarantee by the designating State that it has made the necessary arrangements for safety/security oversight if responsibility for these lie with a third State not bound by the underlying bilateral agreement.

By making their policy or practice public, States would in effect be issuing a good-faith but non-binding pledge on how they would respond to a notice of designation in a situation where their bilateral agreements may give them discretion to deny authorization.

Either through letters of comfort...

One possible framework for this approach might be for each State to issue a letter or statement of its policy when determining whether to authorize a designated foreign airline to operate agreed international services where the designated airline does not meet the substantial ownership and effective control test.

... or a statement of common policy

Another possible framework for this approach might be agreement by like-minded States to make public a common policy or practice on whether to authorize a designated foreign airline to operate agreed international services where the designated airline does not meet the substantial ownership and effective control test. ICAO could provide a forum in which to develop this common policy approach.

While letters of comfort or a statement of common policy would not provide the legal certainty of the first option to the designating State, they would at least provide a very strong indication of the range of bilateral agreements under which airlines with liberalized ownership and control could operate and form the basis for potential future consolidation into a legal instrument.

As a first step toward a statement of common policy, the 54 respondents to the ICAO's 2001 survey of States' Policies and Practices on ownership of airlines could release their responses. With the agreement of States, ICAO could set a target date for an initial publication of States' policies and could facilitate dissemination of the statements through the ICAO website or a published document.

Both of these approaches can be applied regionally or globally

Both of these approaches can be applied by regional groupings or developed for global application by like-minded States. Regional groupings may prove to be particularly well suited to this form of liberalization, as there are generally common economic and legal objectives within which these mechanisms can be applied. There are already several examples of regional carriers with liberalized ownership and control provisions. However, this application of these mechanisms still leaves airlines exposed to the risk of losing their designation if they adopt liberalized ownership and control provisions and operate to major markets beyond the regional grouping.

UNDERLYING ISSUES FOR FURTHER CONSIDERATION

Beyond allowing greater freedom to seek international equity, the type of liberalization that letters of comfort, a statement of common policy or a legally binding instrument offer opens two areas for further discussion amongst like-minded States in considering coordinated action:

- whether there is a need to maintain an economic connection between the airline and its designating State (including, but not limited to "principal place of business and/or place of incorporation"); and

- whether there is a need for the designating State to retain regulatory control (i.e. safety and security oversight) of the airline it designates.

These two points raise questions that need to be addressed by States wishing to take coordinated action on liberalized ownership and control criteria.

Definitional issues for economic regulatory criteria are not new...

Economic regulatory criteria for designation have proved difficult to define. The footnotes to the ICAO draft text proposed at ATRP-10/5, that supports a combination of principal place of business and a clear line of responsibility for regulatory control also show that this economic regulatory criterion is open to interpretation.

...but market access control is still available elsewhere in bilateral air services agreements

Problems in interpreting any economic regulatory criterion for designation are not new. There has for example been considerable discussion in the past on the meaning of “effective control” in substantial ownership and effective control clauses. The issue for like-minded States contemplating action either through a letter of comfort, statement of common policy or through a legally binding instrument containing liberalized ownership and control criteria but who also want to retain benefits for the citizens of the contracting parties is whether the remaining provisions in the agreement can accomplish that benefit retention objective, while freeing up access for their international airlines and the airlines of their partners to foreign capital.

Absence of economic regulatory criteria brings its own challenges...

A mechanism for guaranteeing market access that is limited to reinterpreting the economic designation criterion of bilateral agreements already assumes that regulatory control of the airline remains with the designating State. However, if the only designation criterion is regulatory control, the bilateral agreement under which the airline is designated ceases to influence who benefits from operations under the agreement. The agreements with the third State or States whose nationals own the airline will determine whether comparable opportunities are available in operations involving the third State or States. This approach would appear to lend itself to those States that are already committed to opening market access through liberalized traffic rights to all comers without regard to reciprocity.

Where there is no connection between the State and the airline that it designates, new structures would be required in most air services agreements to identify who is responsible for the safety and security oversight of the airlines designated under the agreement.

...and ICAO has the chance to demonstrate its value as a forum for advancing liberalisation by dealing with this critical step forward

Part of the challenge for ICAO is to demonstrate that it is the organization best suited, as the specialized UN body for air transport, to advance the liberalization of air transport in an orderly and progressive manner.

As the President of the ICAO Council observed in his address to the IATA AGM in Madrid in 2001, liberalizing ownership and control rules is a critical step forward for the airline industry.

ATRP members and observers agree that there is unlikely to be consensus across the ICAO membership for any one method of progressing liberalization, either independently or by coordinated action. Nonetheless, ICAO has an important role both in helping to develop and refine mechanisms for a coordinated approach by like-minded States who choose to liberalize airline ownership and control provisions, and in helping States to develop a position on the content of those mechanisms in line with Assembly Resolution A33-19 Appendix A.

CONCLUSION

The ATRP Working Group recommends that the following recommendation be put to the ATConf/5:

The Conference

Recognizing that liberalizing international air transport, including conditions regarding airline ownership and control, is consistent with the Preamble to the Convention on International Civil Aviation, which calls for the safe and orderly development of international civil aviation and for international air transport services to be established on the basis of equality of opportunity and operated soundly and economically;

Recognizing that each State has the right to pursue liberalization of its air services arrangements at its own pace and in the direction of its choice;

Recognizing that timely and decisive action to liberalize ownership and control provisions would provide additional opportunities for international airlines to operate more efficiently, effectively, safely and securely;

Recognizing that such action could be taken both independently and in coordination between Contracting States;

Recognizing that coordinated action between States would offer a valuable opportunity for more rapid liberalization of ownership and control restrictions;

Endorses both independent and coordinated action as options to liberalize ownership and control provisions; while

Recognising that adequate safety and security oversight continue to be of paramount importance, regardless of any changes in ownership and control regimes.

The Conference

1. *Urges* Contracting States to liberalize the conditions under which they accept designation of a foreign airline in cases where the airline does not meet the ownership and control provisions of the relevant air services agreements by:

- a) issuing individual statements of their policies for accepting designations of foreign airlines,

- b) through joint statements of common policy, and/or
- c) through a binding legal instrument

while continuing to ensure that the State designating the airline continues to provide or ensure the provision of adequate oversight of safety and security for the airline being designated in accordance with standards established by ICAO;

2. *Requests* Contracting States taking such action to notify ICAO and provide it with copies of all relevant documents, including the appropriate filing of any new arrangements pursuant to Article 83 of the Convention;

Requests the Council to

3. *Note* the endorsement by the Conference of coordinated action by Contracting States as an option to liberalize the conditions under which the designation of an airline is accepted under air services agreements through:

4. as a matter of priority *further refine* the options identified by the ATRP/10 Working Group on ownership and control as part of developing the framework for the progressive liberalization of international air transport; and

5. *Encourage* Contracting States to assist the Council in refining these options

6. as a first step, *request* the Contracting States that responded to the ICAO survey of States' Policies and Practices concerning air carrier ownership and control to release their responses; and

7. *Encourage* States that did not respond to the survey to release statements of their policies on air carrier ownership and,

8. *Maintain* a central registry of Contracting States' individual and joint policy statements and to set a target date for an initial publication and dissemination of Contracting States' policies on authorizing designation of foreign airlines; and

9. *Requests* the Council to report to the next ordinary session of the Assembly.