



大会第 37 届会议

经济委员会

议程项目 49：国际航空运输服务的自由化

便利空运企业进入国际资本市场

(由美国提交)

执行摘要

国际民航组织应继续推动要考虑各种选择，以便利空运企业进入国际资本市场，并将其作为一种手段，提升国际航空运输对于贸易、旅游、就业机会和经济发展的贡献。国际民航组织的努力应包括，考虑制定一项多边文书，供选择这样做的国际民航组织成员国商定对等的义务，承允放弃诉诸国籍条款，并藉此取消对跨国投资的壁垒。

行动：请大会要求理事会：

- a) 将“便利空运企业进入国际资本市场”这一题目，补充到本组织的工作方案中；和
- b) 考虑就这一题目，拟定一份具有法律约束力的多边协议或文书，并使其开放供各国加入。

战略目标:	本工作文件涉及战略目标 D — 效率 — 提高航空运行的效率。
财务影响:	将需要一定的资源来开展这项任务。
参考文件:	Doc 9819 号文件：《世界范围航空运输会议报告》—— ATConf/5，2003。

1. 引言

1.1 在议程项目 2.1 下，第五次世界范围航空运输会议结论认为：“.....将航空承运人所有权和控制权的规定自由化也有益处”；“自由化的方法和方向取决于各国根据国家利益进行选择”；“各国可以.....采取促进自由化的做法.....，接受外国指定的可能不符合传统的国家所有权和管理权标准.....的航空承运人”；“各国可以选择在单边、双边、地区、有限多边或多边基础上，对航空承运人所有权和控制权进行自由化”；和“国际民航组织在促进自由化这一领域发挥了并应该继续发挥主导作用。”

1.2 国际民航组织秘书处，为第五次世界范围航空运输会议拟定的第7号工作文件：航空承运人的所有权和管理权的自由化，指出，“绝大多数（双边航空运输）协定，包括自由化或“开放天空”协定，都在继续采用传统（的管理权和控制权）标准”。文件认识到，“使航空承运人所有权和控制权自由化有明显的益处”，而且“这能够为航空承运人提供对资本市场的更广泛的准入。”文件还认为，“一个重大挑战是，如何使不愿意在目前进行自由化的国家，不妨碍其它国家这样做。”

1.3 国际航空运输协会拟定了一份政策原则声明，并在2009年11月，获得数个航空大国的赞同。该政策原则声明认为：“双边航空运输协定对于……投资的限制……，可能削弱国际航空运输对于贸易、旅游、就业机会和经济增长的贡献。”该政策原则声明呼吁，应遵守“在没有合理的社会或公共政策关切的情况下，力求鼓励对其航空公司进行外国投资的……国家……的政策”，以及“对于为实现这一目标而制定多边协议的可能性，应给予同情的考虑。”

2. 讨论

2.1 2007年的美国—欧盟航空运输协定，朝着使空运企业投资机会自由化迈出了重要的一步。双方商定，不反对与第三国的双边协议所规定的另一方国民对于第三国空运企业的所有权。对于不是欧盟成员国的10个欧洲国家，以及18个非洲国家的任何空运企业的航班，美国还同意，不以欧盟国民对于这些空运企业享有控制权为理由，而行使禁止其飞行的权利。

2.2 为讨论的目的，美国拟定了一份关于对空运企业进行外国投资的多边公约草案。已根据从其它国家、航空利害攸关方、以及这一领域的专家的意见，对草案做了大量修改。草案的最新版本载于附录中。这一公约如获得国际民航组织召开的外交会的通过，将推动自由化，并便利空运企业进入国际资本市场。公约将开放，供准备商定对等的义务，承允放弃诉诸国籍条款，并藉此取消对跨国投资的壁垒的各国加入。

2.3 在本文件及所附草案中，“控制”一词系指对于空运企业的管理和经济控制，而不是以任何方式，影响各国由芝加哥公约所赋予的对于空运企业的管理监督责任。

3. 结论

3.1 大会应要求理事会，在本组织的工作方案中包括一项内容，即审议并最后拟定一份具有法律约束力的多边协议或文书，开放供准备商定对等的义务，承允放弃诉诸国籍条款，并藉此取消对跨国投资的壁垒的各国加入。

APPENDIX
REVISED DISCUSSION DRAFT
10 SEPTEMBER 2009
Multilateral Convention on
Foreign Investment in Airlines

The Parties to this Convention;

Recognizing that many air services agreements include “nationality clauses” that allow each party to those agreements to refuse, revoke, suspend, or limit operating authorizations or technical permissions for airlines of the other parties to such agreements unless substantial ownership and effective control of those airlines are vested in the other parties, their nationals, or both;

Seeking to enhance the access of airlines to global capital markets in order to strengthen competition and reflect the realities of a global aviation industry;

Acknowledging that such nationality clauses are not required under international law and may discourage foreign investment in airlines; and

Desiring to facilitate foreign investment in the airlines of those states that permit or encourage such investment;

Have agreed as follows:

Article 1
Definitions

For the purposes of this Convention the term:

1. “Airline of a Party” means an airline that has received its air operator certificate (AOC) from, and has its principal place of business in the territory of, that Party; and
2. “Partner List A” means a list submitted by a Party, in accordance with paragraph 1 (a) of Article 4.
3. “Partner List B” means a list submitted by a Party, in accordance with paragraph 1 (b) of Article 4.

Article 2
Waiver of Nationality Clause

1. A Party shall not exercise any available rights under an air services agreement with another Party to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an

airline of such other Party on the grounds that substantial ownership or effective control of that airline is vested in any third Party or Parties, their nationals, or both, provided that each said Party has included all other said Parties on its Partner List A.

2. A Party that includes itself on its Partner List A shall not exercise any available rights under an air services agreement with a second Party to refuse, revoke, suspend, or limit operating authorizations or technical permissions for an airline of that second Party on the grounds that substantial ownership or effective control of that airline is vested in the first Party, its nationals, or both, provided that each of the two Parties has included the other on its Partner List A.

Article 3 Removal of Limitation on Foreign Ownership and Control

A Party shall not limit on the basis of nationality the ownership or control of the airlines of that Party by nationals of another Party or Parties, provided the first Party has included the other Party or Parties on its Partner List B and each of the other Parties has included the first Party on its Partner List B.

Article 4 Partner Lists

1. Each Party, at the time of ratification, acceptance, or approval of or accession to this Convention, shall submit to the Depositary:

- a) a Partner List A of partners as to which it shall not exercise any available rights under its air services agreements with those partners to refuse, revoke, suspend, or limit operating authorizations or technical permissions of an airline of those partners on the grounds that substantial ownership or effective control of the airline is vested in another partner or partners on the list, nationals of that other partner or partners, or both; and
- b) at its discretion, a Partner List B of partners as to which it shall not limit on the basis of nationality the ownership or control of airlines of that Party by nationals of one or more of those partners.

2. A Party may add partners to or delete partners from a Partner List by submitting a new list to the Depositary superseding its prior list. The new list shall identify any additions to and deletions from the Party's prior Partner List. Additions shall become effective 30 days after the date of receipt of the new list by the Depositary and deletions shall become effective at the end of the International Air Transport Association (IATA) traffic season in effect one year after the date of receipt of the new list by the Depositary.

3. The requirement under paragraph 1(a) of this article that a Party submit a Partner List A may also be satisfied by a Party submitting to the Depositary written notice that it will not exercise any available rights under its air services agreements with any Party to this Convention to refuse, revoke, suspend, or limit operating authorizations or technical permissions of an airline of that Party on the grounds that substantial ownership or effective control of the airline is vested in another Party or Parties, nationals of a Party or Parties, or both.

4. The discretionary filing under paragraph 1(b) of this article of a Partner List B may also be satisfied by a Party submitting to the Depositary written notice that it will not limit on the basis of nationality ownership or control of airlines of that Party by nationals of any Party or Parties to this Convention.

Article 5

Ownership and Control of a Party's Own Airlines

Nothing in this Convention requires a Party to permit foreign ownership or control of airlines of that Party.

Article 6

Depositary

1. The original of this Convention shall be deposited with [], which is hereby designated as the Depositary of this Convention.
2. The Depositary shall transmit certified true copies of this Convention and any amendments thereto to all Parties and signatories.
3. The Depositary shall notify all Parties and signatories of:
 - a) All signatures, ratifications, acceptances, and approvals of and accessions to this Convention in accordance with Article 7, and any amendments thereto;
 - b) The dates on which this Convention enters into force for each Party in accordance with Article 7; and
 - c) Any withdrawals from this Convention and the effective date thereof in accordance with Article 9.
4. The Depositary shall maintain a centralized register accessible to all Parties, including on the Internet, of each Partner List submitted to it in accordance with Article 4.
5. Following entry into force of this Convention, it shall be registered with the Council of the International Civil Aviation Organization in accordance with Article 83 of the Convention on International Civil Aviation and with the United Nations in accordance with Article 102 of the UN Charter.

Article 7

Signature, Consent to be Bound, and Entry into Force

1. This Convention shall be open to all States for signature at [] until it enters into force in accordance with paragraph 3 of this Article.
2. This Convention is subject to ratification, acceptance, or approval by signatory States and shall be open to accession by non-signatory States.

3. This Convention shall enter into force 30 days after the third instrument of ratification, acceptance, approval, or accession has been deposited with the Depositary.

4. After the third instrument of ratification, acceptance, approval, or accession has been deposited in accordance with paragraph 3 of this Article, this Convention shall enter into force for any other signatory or acceding State 30 days after the date of deposit of its instrument of ratification, acceptance, approval, or accession with the Depositary.

Article 8
Regional Economic Integration Organizations

[Text to be developed in consultation with key
Regional Economic Integration Organizations]

Article 9
Withdrawal

A Party may withdraw from this Convention by giving written notice of withdrawal to the Depositary. The withdrawal shall be effective at the end of the IATA traffic season in effect one year after the date of receipt of the notice by the Depositary, unless the Party withdraws its notice by written communication to the Depositary prior to the effective date of the withdrawal.

Article 10
No Reservation

No reservation shall be made to this Convention.

IN WITNESS WHEREOF, the undersigned, being duly authorized, have signed this Convention.

DONE at [], this [] day of [], 20[].

— END —