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Successes and Challenges of The EU External Aviation Policy

By

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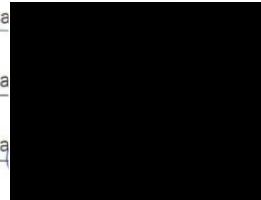
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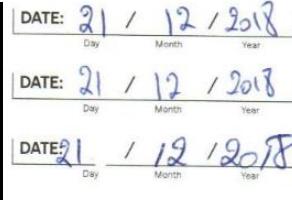
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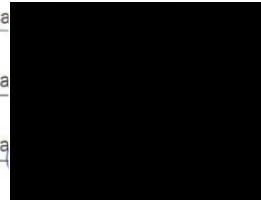
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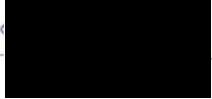


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To my loving family

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Successes and Challenges of EU External Aviation Policy

Hamza Sobhi Mazloum

ABSTRACT

An industry that is more than a hundred years old, commercial aviation first started in 1914 when the first scheduled revenue flight was operated. Commercial aviation currently carries more than four billion passengers annually and more than one third of the value of international trade. The economic and political environment of international air transport cannot be understood without comprehending the legal hurdles that are fraught with the concept of “airspace sovereignty”. The establishment of a “protectionist air transport regime” in the twentieth century (following the two World Wars) was primarily intended for security and prestige reasons. The focus of this study is to identify the regulatory landscape and the core of the international air transport regime before highlighting the European experience in integrating its skies as a single market and developing its external aviation policy under a “single voice” mandated to the European Commission. This study will underscore the positive impact of European integration in the realm of air transport, which also led to the inception of the EU external aviation policy in the global system. It further argues that this EU policy faces a myriad of internal and external regulatory complexities that constrain the Commission’s negotiations power and its tailored-approach towards its targeted non-EU states to reach Comprehensive or Open Skies Agreements, due to internal prerequisites mandated by EU member states to the Commission and external socio-economic and political challenges from potential signatory third states. Moreover, the EU external aviation policy is bounded by the weakening of its air transport competitiveness against foreign actors and is obstructed by the challenge of successfully implementing such agreements in full. This study will zoom in on four cases that highlight the aviation relations between the EU and each of Morocco, Lebanon, the USA and the UAE. These cases will highlight the challenges the EU is facing and the repercussions on the global system.

Keywords: Air Transport, Aviation Policy, European Union, Transport, Regime, Aero-Political, Civil Aviation, Liberalism, Protectionism, GATS, Sovereignty

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Chapter I

Introduction and Scope of Thesis

1.1 Introduction and Importance of Aviation

Transportation is essential in each phase of a state's well-being. Thomas Burke, a jurist who held a chief post at the US State Department, writes that “the economic and cultural maturity of peoples and their governments depends upon it [transportation]” (1946). An industry that is more than 100 years old, commercial aviation first started in 1914 when the first scheduled revenue flight was operated. Aviation soon developed with Royal Dutch Airlines (KLM), the oldest carrier, launching a scheduled route between Amsterdam and London in 1920. The “International Air Transport Association” (IATA), which is the global airline body, notes that this oldest worldwide scheduled route carried in its first year 345 travelers and 25 tons of post mail and cargo¹, which could be carried in a single Boeing 747 flight in these days².

Commercial aviation has rapidly evolved since its inception. It currently carries more than half of the international tourists and more than third of international trade by value. For the European Union (EU) trade activities, aviation is a vital pillar as it carries a large value proportion of goods; 26.7 percent of the total value of imported and exported goods (922.4 billion euros) are carried by air. In terms of weight, this only

¹ See more at <http://airlines.iata.org/analysis/100-years-of-commercial-aviation>

² Check the following link to review the characteristics of “Boeing 747-8” aircraft
[“http://www.boeing.com/commercial/747/#/design-highlights/characteristics/747-8/”](http://www.boeing.com/commercial/747/#/design-highlights/characteristics/747-8/)

equals a mere 0.8 percent (or 19.6 million tons)³. IATA Director General Knut Hammarskjöld (1966 – 1984) noted in 1978 that international airlines carried over one hundred million passengers⁴; in 2018, 40 years later, the International Civil Aviation Organization (ICAO) announced that air passenger numbers reached “a new record [of] 4.1 billion passengers in 2017”⁵.

In its 2016 report⁶ presented at the “UN High Level Political Forum’s Sustainable Development Goal Business Day”, the Air Transport Action Group (ATAG) highlighted that aviation supported in 2014 more than 62.7 million jobs and generated a “gross domestic product” (GDP) of USD 2.7 trillion, which outpaced the collective 2016 GDP of Thailand, Austria, Norway, United Arab Emirates, Egypt, Denmark, Vietnam, Portugal, Kuwait, and Nepal⁷. The aviation industry is a major economic driver and a means for social development, bringing together people, nations and cultures by offering access to worldwide markets and boosting trade and tourism. ATAG highlights that the current number of scheduled airlines exceeds 1,400 with 26,000 aircraft in service at 3,900 airports in the world, which proclaims aviation with an unrivaled global network for serving travelers and businesses in every part of the globe. In addition to the

³ See more at the “Directorate-General for Mobility and Transport (European Commission)” the “EU transport in figures - Statistical pocketbook 2018”, retrieved on 10 October 2018 from [“https://publications.europa.eu/en/publication-detail/-/publication/52f721ed-c6b8-11e8-9424-01aa75ed71a1”](https://publications.europa.eu/en/publication-detail/-/publication/52f721ed-c6b8-11e8-9424-01aa75ed71a1)

⁴ See K. Hammarskjold, “International Air Transport, Tariffs and Trade, address to the Royal Institute of International Affairs, London, 25 April 1978”; and “Comments at symposium on the Changing Environment of International Air Commerce, Georgetown University, Washington, D.C., 4 May 1978”.

⁵ See more at “<https://www.icao.int/Newsroom/Pages/Continued-passenger-traffic-growth-and-robust-air-cargo-demand-in-2017.aspx>”

⁶ To view the “Aviation Benefits Beyond Borders” report (July 2016) published by the “Air Transport Action Group”, please check the following link:

[“https://aviationbenefits.org/media/149668/abbb2016_full_a4_web.pdf”](https://aviationbenefits.org/media/149668/abbb2016_full_a4_web.pdf)

⁷ Data extracted from the “World Development Indicators database, World Bank, 15 December 2017 at <http://databank.worldbank.org/data/>”

economic advantages it brings, air transport is also considered to be one of the fastest and safest means of transportation available, which adds to its importance⁸.

Transport expert and Professor Kenneth John Button and Professor Roger Stough write in their book that the “air transport is the fastest growing transport industry”, which “is a substantive contributor to the national income and trade accounts of many countries and is an important lubricator of trade more generally” (2000). Professor Ravi Ramamurti and Professor Ravi Sarathy highlight that the air transport industry facilitates globalization of the world economy but “it is itself one of the least globalized sectors” (1997).

The nature of the aviation industry in the context of the global air transport regime will be highlighted in the coming sections. This study will indicate that the conclusion of a protectionist air transport regime in the 1900s was primarily for security reasons following the two world wars. Later in the 1970s, the industry started to witness de-regulatory steps within the boundaries of the existing air transport system. First, at the US domestic level towards the end of the seventies, and then at the EU level by the end of the eighties. This was later followed by *so-called* liberal air transport agreements between states in the early nineties, especially after the US implemented an “open-skies” policy with other states. However, in the intervening years, local, regional and international efforts have not yet resulted in what could be considered a truly liberal and global aviation industry. This failure is related to the core of the current international air transport regime. Attempts to liberalize the sector focused mainly on the notions related

⁸ See more “Aviation Benefits 2017” at “<https://www.iata.org/policy/Documents/aviation-benefits-%20web.pdf>”

to market access, while little amount of work was put on other regulatory issues related to the optimum liberalization of the market. While this is not the primary aim of this thesis, the next chapter will tackle the foundation of the core in air transport international relations to better understand the EU behavior in external aviation issues.

Professor Alan Dobson, who wrote several works on Anglo-American relations and air transport, argues that airlines' involvement with research, military, economic, political, foreign policy, security, national pride and public utility mean that they are highly politicized stakeholders. In addition, flag carriers were usually government owned, and for these reasons, airlines have been equally a political and commercial enterprise (Dobson, 1998). As most airlines, airports, or other air transport enterprises remain fully or partially state-owned, the debate of subsidies to airlines and other air transport enterprises is gaining more and more momentum. While some industry stakeholders denounce subsidies and other measures for tilting what is generally a "level-playing field" in the international air transport market, others condemn the rise of neo-protectionism in air transport relations and call for the equal opportunity to undergo the historical development of other long-established air transport enterprises. Regardless of the fact if airlines and their governments are abiding by their national or supranational laws, civil air transport has been always a lever to the economy; be it in times when airlines were worryingly subsidized or during such times where state aid is becoming prohibited or restricted in more states.

Professor Daniel Goedhuis, the first air law professor at Leiden University in 1938, notes that air services constitute a political power – "even in the purely economic field", that cannot be disconnected from politics (1942). Aviation has rapidly evolved in

the past century and continues to advance with time. The technology provided by air transport is changing how people, businesses, and cities are being interconnected. This thesis will focus on the external air transport relations of the European Union in the current air transport regime. The integration of the EU as a supranational power and the creation of a single air transport market provides an interesting case to study in the context of international relations theoretical frameworks of international regimes.

1.2 Aims of The Study and Research Questions

This study scrutinizes the EU air transport market: how it integrated into a single aviation market and how the EU institutions and its member states are driving the external aviation policy in the context of the global air transport regulatory regime. The common (single) air transport market currently operating in the EU has been incredibly beneficial to businesses, consumers and regulators in the main. However, there are criticisms about the prosperity of the European common air transport market, and indeed the foundation of a new global air transport regime, as a whole, which must be addressed. This study explores three manifestations; the first is on how the EU regulatory framework evolved through the years in the context of the current regulatory regime and the implications on the air transport sector at both the internal single market level and at the external level with neighboring states and global partners. The second manifestation will highlight how this supranational regime is conducting its external aviation policy and compares the operational environment of EU air transport institutions vis-a-vis non-EU air transport institutions. The third and last manifestation focuses on the repercussions of this EU policy on the EU air transport market and other non-EU markets and on the structure of the global air transport regime. Investigating these questions will be done in reference to the following four cases: Morocco, Lebanon,

USA and UAE. Morocco and Lebanon air transport relations with the EU will be discussed within the framework of the Euro-Mediterranean partnership. From the EU global aviation partners, the cases of the US and the UAE will be examined. The case of Morocco will highlight that the will of the government to boost tourism and open the air transport market has led to the conclusion of the agreement with the EU. On the other hand, the case of Lebanon will underscore the lack of political will to finalize a comprehensive agreement. The third case that will be studied, the US case, will review how the EU-US aviation developed to reach and open skies agreement that does not reflect the ultimate vision of the EU or the US long-standing call for a liberal air transport regime. The last case that this study will shed light on is the UAE. This case will revisit the added-value and aims of signing an EU-level agreement. In brief, the case studies will help in showcasing the social, economic and political internal and external struggles that impede the progress of the European Commission in sealing EU-level aviation agreements with its targeted non-EU states.

This study will underscore the positive impact of European integration in the realm of air transport, which also led to the inception of the EU external aviation policy in the global system. It further argues that this EU policy faces a myriad of internal and external regulatory complexities that constrain the Commission's negotiations power and its tailored-approach towards its targeted non-EU states to reach Comprehensive or Open Skies Agreements, due to internal prerequisites mandated by EU member states to the Commission and external socio-economic and political challenges from potential signatory third states. Moreover, the EU external aviation policy is bounded by the

weakening of its air transport competitiveness against foreign actors and is obstructed by the challenge of successfully implementing such agreements in full.

1.3 Methodology

The thesis will highlight the EU experience in integrating its air transport market and how it developed an EU external aviation policy, which has its successes and shortcomings within the parameters of an EU common air transport market. Primary and secondary references from various resources will be examined. The main resources will revolve around the available literature tackling international regime theory, the foundation of the global air transport regime, the EU air transport market integration, its external aviation policy formulation, the successes and challenges of the EU single aviation market, and the status of the global aviation regime with focus on protectionism and liberalization trends in bilateral and multilateral relations. It will also refer to pertinent reports, market insights, working papers, and conventions and treaties related to the subject matter.

“Comprehensive Air Transport Agreements” between the EU and selected third states will be reviewed, and the performance of the relative air transport markets after such agreements came into force. To highlight the performance, an empirical analysis will be conducted by compiling insights and data extracted from reports published by IATA, ICAO, Eurostat and others.

An interview and citations from high-level speeches will be referred to in order to better highlight the lessons learned from protectionism and liberalization in the air transport market, the current regulatory regime, the aviation landscape between the EU and third countries and the way forward.

1.4 Map of The Thesis

This chapter has introduced the importance and benefits of aviation; which is a component of domestic politics and a reflection to states' foreign policy⁹. Although government intervention or interference is becoming minimal in certain areas in the air transport sector, Robert Thornton highlights that "the reasons for this extensive [government] intervention in air transport can be conveniently grouped under five headings: 1) national defense; 2) peacetime national objectives; 3) consumer protection; 4) protection of locally owned companies; and 5) foreign exchange and efficiency" (1971). Such reasons should not be ignored while analyzing the aero-political policies and relations.

The second chapter will review the core structure of the current air transport regulatory regime. Firstly, the theoretical framework of international regimes theory must be clearly defined, and this will draw upon the influential works of Krasner, Haggard and Simmons, Keohane and Nye, Ruggie and several others. In this context, the study will explore how an aviation regime was defined and on which principles it was founded. This chapter will trace how aviation policies developed since the beginning of the 20th century, and how interstate relations have evolved since the signing of the "Chicago Convention", which is the cornerstone of the air transport regime and the source of international air law.

⁹ Selçuk explores in his thesis how "Turkish Airlines has become a foreign policy tool of Turkey". "*Although the developments in Turkish foreign policy have always influenced the operations of Turkish Airlines, from the 1980s onwards, Turkish Airlines has been openly used as a foreign policy tool that facilitates Turkey's opening up to various geographies*". Selçuk, O. (2012). "*Turkish Airlines as A Soft Power Tool in The Context of Turkish Foreign Policy* (Unpublished master's thesis)". Boğazköy University. Retrieved from "<https://orcunselcuk.files.wordpress.com/2014/11/orc3a7un-selc3a7uk-ma-thesis.pdf>"

Following the “Chicago Convention” section, Bermuda Agreements will be highlighted as they initiated the structure of interstate relations in the management of air transport agreements; open skies and inter-regional liberalization approaches will be also noted. The last section in the chapter will stress the difficulties faced in reaching an international agreement on regulating the economic aspects of air transport and the roles of ICAO and the WTO.

The third chapter will highlight the development of the common EU aviation policy, and the functioning of such a policy under the auspices of EU institutions and individual EU member states, with great focus on its external reach. Liberalization of the EU air transport market will be reviewed along with the period that followed liberalization. The chapter will further highlight how the EU external aviation policy was formulated and how it is functioning.

Apart from the dynamics of the EU internal aviation market, this thesis will also observe the state of EU external affairs in air transport. To do so, the fourth chapter will tackle four cases. From the EU neighborhood (Common Aviation Area), two particular states, Morocco and Lebanon will be studied in the context of “Euro-Mediterranean Partnership” and “European Neighbourhood Policy” (ENP). Whereas, from the EU global aviation partners, the US and the UAE will be highlighted. It is noteworthy to mention that EU agreements with Morocco and the US were signed in 2006 and in 2007 respectively; whereas, agreements with Lebanon and the UAE are still in the pipeline.

The fifth chapter will highlight the successes of the EU aviation policy integration as a single market; which has increased connectivity, competition, reduced

air fares, enhanced safety, created new market opportunities, and most importantly has increased the negotiations power of the bloc as a single voice in air transport relations with external partners. The chapter will further explain the challenges of the EU aviation policy. The EU policy is facing internal and external regulatory complexities that constrain the Commission's negotiations power. Its tailored-approach towards its targeted non-EU states to reach Comprehensive or Open Skies Agreements is proving to be a challenge due to internal prerequisites mandated by EU member states to the Commission and external socio-economic and political challenges from potential signatory third states. Moreover, the EU external aviation policy is bounded by the weakening of its air transport competitiveness against foreign actors and is obstructed by the challenge of successfully implementing such agreements in full. Above all, the EU external aviation policy is failing to move beyond the core of the current IR regime in international air transport; meanwhile, it is entrenching disparity within the system.

The chapter will further summarize the findings of the thesis; reshaping the EU external approach, de-regulating the aviation industry and revisiting other applicable regulations that lower the efficiency of the industry. For example, the EU must build new mega-hubs and expand the current capacity. It should also look at aviation as a lever to the economy and tackle the taxes and fees implemented on air transport, which are burdening the EU air transport industry. Nevertheless, the implementation of “SESAR (Single European Sky ATM Research)” program seems the only hope for Europeans to tackle their congested skies. The conclusion will pave the way for further research on EU aviation, the international air transport regulatory regime and the prospects of a new Chicago Convention.

Chapter II

Core Structure of The Air Transport Regulatory Regime

2.1 Background

The structure of the current global air transport regulatory regime has slowly evolved since the second decade of the 20th century. This chapter will discuss how security of states -- sovereignty over airspace -- has brought about a regime that obstructed the liberalization of the air transport industry by obligating states to engage in complex bilateral understandings between each other. Such bilateral understandings conflict with the spirit of globalization that aviation reflects. The development of national, interstate, and regional air transport relations will be also examined since it represents the foundation of the core structure of International Relation (IR) in aviation.

2.2 IR Theory and Air Transport

The burgeoning literature on international governance, especially through the development of international regimes, has paid scant attention to the aviation sector, despite its importance to the economies of most developed and developing countries. The operation of routes across ‘airspace’ borders requires substantial understandings, regulatory procedures, coordination, and compliance from the concerned airlines and states. This section will highlight the current regulatory regime governing the air transport relations, and provide theoretical insights on international institutions and regimes.

In one of the seminal works on the subject, IR Professor Stephan Krasner describes regimes as “sets of implicit or explicit principles, norms, rules, and decision-making procedures around which actors' expectations converge in a given area of international relations” (1983). Stephan Haggard and Beth Simmons note that “the influential definition” of Krasner seeks a compromise between “order” and explicit commitments, which “stresses the normative dimension of international politics” (1987). On the other hand, Professor John Gerard Ruggie argues that regimes are sets of “mutual expectations, rules and regulations, plans, organizational energies and financial commitments, which have been accepted by a group of states” (1975). International Affairs Professor Robert Keohane and Political Science Professor Joseph Nye perceive international regimes basically as “governing arrangements that affect relationships of interdependence” that comprise “networks of rules, norms, and procedures that regularize behavior and control its effects” (1977). International regimes pave the way for the establishment of international organizations and agreements. The following sections will highlight how an air transport regime was instituted on the basic construct of state sovereignty, which has been impeding the globalization of the industry.

(Ramamurti and Sarathy, 1997)

To start with, Professor John Cobb Cooper, who founded the “Institute of Air & Space Law at McGill University” in Montreal in 1951 in addition to holding other high-ranking posts in the aviation industry, states that air transport comprises three interrelated aspects that render it international. In his paper “Air Transport and World Organization”, Cooper explores the existing three legal, economic, and political dimensions of air transport which create conflicts between national and international

interests for “any realistic plan for World Organization” in air transport (1946). Cooper further argues that under the legal aspect, the notion of “complete and exclusive sovereignty over national airspace” permits the concerned state to unilaterally control air routes and carriers flying to, from, or over its airspace, which gives states the power to “control international air trade routes”. In the economic field, he adds that such control by each state over its airspace, which can impact the trade air routes, reflects on world trade and the economic position of each state against the other by explicitly admitting or rejecting foreign airlines. Lastly, in the political field, Cooper stresses that whenever a state exercises its sovereignty right, it is then developing “its air transport to the extent needed by its domestic and foreign commerce and other legitimate objectives”. The exercise of sovereignty allows states to develop the domestic and foreign commerce at their command. Any world organization for air transport would “require sufficient international control so that air transport does not become an instrument of unfair nationalistic competition or aggression and, thus, the source of serious international misunderstanding and dangerous ill-feeling” (Cooper, 1946).

Krasner believes that sovereignty remains a fundamental trait in interstate relations and “those who proclaim the death of sovereignty misread history” (2001). The nation-state is keen to survive and was able to face “new challenges-even the challenge of globalization”. This is apparent in international agreements, in which states are able to adopt the ones that they find “attractive” (Krasner, 2001). Exclusive sovereignty has

prompted states to arrange bilateral agreements based on mutual advantage, as perceived by each side¹⁰.

“Domestic political constraints” were highlighted by Haggard and Simmons as they constitute a major issue for governments, which are keen to benefit from cooperation under regimes, but still try to avoid or minimize “the costs that may fall on politically important [domestic] groups” (1987). Krasner argues that regimes are beyond being “temporary arrangements” that could change with any change in power or interests (1982). He even highlights that Kenneth Waltz’s concept of “balance of power” cannot be viewed as a regime but as a change in behavior once interests and power change. The basic role of regimes is to organize state behavior in a world of sovereign states.

The economic and political environment of international air transport cannot be explored without comprehending the legal hurdles that are fraught with the concept of airspace sovereignty. This concept produces most of air transport problems as elements of international relations (Cooper, 1946). National sovereignty before World War I was not decided by jurists or statesmen though the topic has been in discussion since 1901 and various definitions were discussed. Commonly, notions such as the difference between complete sovereignty or no sovereignty have been variously debated, as well as more discussions around zone systems, which split the upper and lower airspace, in addition to other debates (1946).

¹⁰ See more of Dr. Sanat Kaul presentation at the “International Conference organized by Institute of Air & Space Law, McGill University, Montreal & Petroleum University, Gurgaon, India” through the following link: “https://www.mcgill.ca/iasl/files/iasl/C12-Sanat_Kaul-Chicago_Convention_revisited.pdf”

Peter Katzenstein et al. note that in the fifties and sixties of the past century, public policy specialists and academics of international relations put major focus “on security issues and high politics”, while scant attention was paid to the political study of economic issues (1998). This focus was primarily a result of two consecutive world wars, which diverged most statesmen and academics’ focus on security issues. At the same time, such focus by statesmen led to the establishment of a security-based regime in air transport as will be highlighted in later parts of this study. Later in the mid-seventies, a new liberal movement began to emerge. As the liberal trend gained momentum, protectionist waves started to rise. British IR scholar Susan Strange underscores that protectionism “encourages inefficiency and impoverishes both individual consumers and the society as a whole” (1985). She adds that many liberals contend that protectionist practices adopted by one state could incite retaliatory protectionist measures from others, leading to a “vicious spiral” (1985).

In the 1960s, moreover, many scholars began analyzing functional integration theories and to explore neo-functional approaches of “economic and political integration” following the establishment of the “European Economic Community” (Haggard and Simmons, 1987). Krasner views EU sovereignty rules as inconsistent with conventional ones, in which EU member states have established supranational bodies that impact the sovereign choices of EU states, in institutions like the “European Court of Justice”, “European Commission”, “European Council of Ministers”, and others (2001). As stipulated in the “Single European Act” and the “Maastricht Treaty”, voting on some issues does not require the consent of all parties. The majority or qualified majority can adopt decisions for such issues. Krasner argues that the EU resembles a

unique and new “institutional structure” which coexists with the sovereign-state model instead of displacing it.

Baldev Raj Nayar, Professor Emeritus of Political Science at McGill University, attempts to explore the applicability of three theoretical schools on the structure of air transport relations. He investigates the contribution of the three dominant IR traditions of realism, liberal institutionalism, and modified structural realism (1995). Based on Waltz’s balance of power theory, Nayar argues that in the absence of an anarchic system, realism reflects states’ interests and capabilities amidst interstate conflict. He asserts that any cooperation between states is viewed as transient and contingent. The second approach discussed by Nayar is liberal institutionalism, which aims at sharing evolving values and norms within the international community to transcend interstate conflict. In other words, regimes become institutionalized regardless of the distribution of power. Lastly, Nayar tackles modified structural realism that is a fusion of realism and institutionalism. This approach would assume states as rational utility-maximizers, who would pursue cooperation to avoid undesired outcomes; although that such cooperation might constrain state behavior. Further analyzing these approaches, Nayar underscores that the existence of transnational governmental and nongovernmental organizations implies that international cooperation exists. However, further analysis of the international system reveals that the institution’s role is crippled by the economic regulation of air transport, as will be highlighted in this chapter. Unlike the “International Monetary Fund” (IMF) and “World Trade Organization” (WTO), the “International Civil Aviation Organization (ICAO)” cannot intervene in economic disputes of air transport services. Professor Andreas Lowenfeld contends that the

difference between aviation and other industries, such as, “textiles, shipping, or nonferrous metals is that aviation directly engages the prestige, the fascination, and the ‘national interest’ of almost all the countries of the world” (1975). Nayar claims that as states become more prevailing aviation powers such states advocate liberal approach, even if to certain extents; unlike weaker states embracing mercantilism, “pointing to liberalism as the policy of the strong” (1995).

To understand regime change in international aviation, Keohane and Nye’s seminal work “*complex interdependence*”¹¹ is examined by Political Science Professor Christer Jönsson, who places major focus on the “*issue structure*” and “*international organization*” models, which highlight an interdependence amongst states in civil aviation (1981). However, American political scientist Richard Rosecrance et al. highlight that “interdependence may follow a cyclical pattern”, in which it grows up until national governments sense threat against their interests and take action outside the scope of international organization to reduce the impact of the threat (1977). Such deviation from common cooperation and policy coordination is evident, for example, when the US withdrew from the IATA fare-setting scheme or when the European Union imposed unilateral regulations affecting international aviation, such as the EU ETS, EC Regulation 868/2004, and others. Professor John Richards claims that national politicians create international institutions as “interstate regulatory bargains” in order “to serve the interests of domestic political constituents” (1999). Politicians must serve the needs of their voters; Richards refers to US consumers (voters) who were not satisfied

¹¹ See more on *complex interdependence* in “Power and Interdependence” book by “Joseph Nye and Robert Keohane”.

with the airline cartel system in the US that resulted in high prices. He argues that the US domestic deregulation in the late 1970s brought a limit to government control of airlines and interference in market entry and dynamics.

Back in 1946, Thomas Burke, “Former Chief of the Division of International Communications at Department of State (1938-1944)”, anticipated that air routes would develop beyond commercial activities to soon “emerge as one involving some of the primary objects of the external policy of nations”. He highlights that “since the economic strength represented by air routes constitutes, as does that of sea routes, an instrument of political power, neither of them can, even in the purely economic field, be separated from politics” (1946). Lowenfeld explains that international civil aviation is not just a further problem in an evolving international economic system; more importantly it is a grave problem in IR, affecting how states view one another and how their citizens perceive their own country and foreign countries, “and in a variety of direct and indirect connections the security arrangements by which we live” (1975). He concludes that “there is no reason to believe that the assumptions of the 1940s [to control the international industry] remain more valid in aviation than they do in trade, monetary affairs, foreign aid or arms control”. However, “there is every reason to believe that civil aviation is as much a subject and object of international relations as it was in the early postwar period” (1975).

While there has been increasing calls to change the international air transport system, most of the reform has been taking place at an interstate bilateral level. Christopher Findlay and David Round write that “the public policy gains from such changes and the apparent shift in the political economy of policy making in the sector all

suggest [that] a multilateral approach to reform can be effective" (2006). They propose a "transition from the bilateral system to a GATS-based process" by adopting a new "Reference Paper on Air Transport Services". They also emphasize the need to set up new state commitments. Such a system should work on the basis of reciprocity until all bilateral agreements are phased out through the adoption of this reference paper. Randall Lehner explains that there are five justifications for the dominance of the bilateral system that resists liberal institutionalism of international air transport, which are: the status quo position that provides the bilateral system with the strength to prevail; the belief that the bilateral regime is the only viable option; the fear from negative repercussions on home airlines from any multilateral agreements; the ability of bilateralism to better cater for the sociopolitical and geographic differences between states and global regions; and the fear from any indirect national policies that might remain outside the scope of the multilateral agreement and consequently impede the fair implementation of the agreement (1995).

Operating under a bilateral structure with an immense fear of free competition promotes the adoption of carefully-selected bilateral agreements for the cause of 'national security and national prestige' as underscored by Lehner. He adds that nations tend to self-rely on their own airlines rather than be reliant on foreign airlines (1995). Hooper wonders about the requirements needed to reach a true international aviation regime that would rise above the mercantilist activities of states in exchanging traffic rights. Such global regime shall be anchored on the shared commitment of its members to interdependence and "their motivation by shared values and beliefs that have become codified in principles, norms and/or rules" (2014). Lehner proposes several arguments to

refute the antagonists of any multilateral approach that aims at regulating international air transport. He highlights that multilateral agreements will not have a complete and instantaneous implementation; accommodations will be made for developing nations to adjust to new market dynamics (1995). A liberal line of thinking by states with commitment to a fair multilateral agreement would challenge the debate of sovereignty and protectionism to an attitude that respects public service and sectoral balance. Tiroual states that competition should not be perceived as a threat, “but instead a driving force of an engine that requires checks on a regular basis” (2017).

According to Nayar, this type of international regime should limit states’ capabilities to follow their individual interests and should be immune to changes in the balance of power or by the interests of the most powerful nations (1995). However, he further assesses ICAO’s role and notes that the organization will remain a forum to exchange ideas and encourage cooperation as history confirms that trade in international air services will remain under the hegemonic influence of mercantilism. He considered the crux of the matter to be that:

“... acceptance of sovereignty as the organizing principle of the aviation system testifies to the absence of a regime rather than the presence of one, and the fragmented international air transport system merely reflects the basic power-driven anarchical nature of the interstate system (Nayar, 1995)”.

2.3 The Paris Convention

Although “the beginnings of the contemporary IAS [International Aviation System] can be traced to a unilateral declaration by Britain on the eve of World War I” (Nayar,

1995)¹², it was only after the end of World War I that a few states started to realize that air transport requires international attention. The rise in aircraft numbers and the increasing inauguration of regular international air services pushed states to seek an international arrangement for the operation of air routes. In 1919, the “Paris Convention” (“the Convention Relating to the Regulation of Aerial Navigation”) was the first to be concluded among several states to address the political challenges of international aerial navigation.

Aviation pioneer, author and statesman, Dr. Edward Pearson Warner stresses that “the convention was written as an instrument of peace, but it was drawn up in conjunction with the Treaty of Versailles and its companion documents (1926). Article Five of the Paris Convention stipulates that "No contracting state shall, except by a special and temporary authorization, permit the flight over its territory of an aircraft which does not possess the nationality of a contracting state"¹³. The principles of the Paris Convention aimed to reduce the conflicting regulations which differed by country; at the same time the convention “laid the cornerstone of international aviation policy”, although it was restrictive with respect to state sovereignty (Burke, 1946). The “Paris Convention” was formulated under the auspices of the “International Commission for Air Navigation”, which used to exist under the League of Nations. Later on it was

¹² Nayar notes: “In 1911, with military security as the key consideration, Britain passed the Aerial Navigation Act-reminiscent of the navigation acts in shipping declaring the airspace above its territories to be inviolable, and it authorized the government to regulate use of its airspace by foreign aircraft, with the primary goal of barring such aircraft from vast specified areas. Significantly, this initiative came from the hegemonic power of the time, with the most extensive empire. The British unilateral action compelled other nations to follow suit, thus generating an IAS based on the acceptance of absolute sovereign authority in airspace” (1995).

¹³ See more on the “Convention Relating To The Regulation of Aerial Navigation”, signed in Paris in October 1919, at [“https://web.archive.org/web/20120705050026/http://www.aviation.go.th/airtrans/airlaw/1914.html”](https://web.archive.org/web/20120705050026/http://www.aviation.go.th/airtrans/airlaw/1914.html)

replaced by the current UN-arm, the “International Civil Aviation Organization” (ICAO)¹⁴. It is noteworthy to mention that the Paris Convention was only ratified by eleven states, and the US was never part of this convention as it was not a member in the League of Nations.

2.4 The Chicago Convention

2.4.1 Historical Background

Following the end of the Second World War, 54 states met between November and December 1944 in Chicago to "make arrangements for the immediate establishment of provisional world air routes and services" and "to set up an interim council to collect, record and study data concerning international aviation and to make recommendations for its improvement"¹⁵. The meeting resulted in 52 states signing on 7 December 1944 the “Convention on International Civil Aviation”, also known as the “Chicago Convention”. The “Provisional International Civil Aviation Organization” (PICAO) was established in 1945 and functioned until the Convention became effective on 4 April 1947 following the ratification by 26 states¹⁶. As of May 2018, 192 states (roughly all states) have ratified this important Convention¹⁷.

2.4.2 International Agreement

While the Convention could be viewed as an achievement for states in reaching an international agreement, the wording of this Convention has resulted in a complex and

¹⁴ “The International Civil Aviation Organization (ICAO) is a UN specialized agency, established by States in 1944 to manage the administration and governance of the Convention on International Civil Aviation (Chicago Convention). ICAO works with the Convention’s 192 Member States and industry groups to reach consensus on international civil aviation Standards and Recommended Practices (SARPs) and policies in support of a safe, efficient, secure, economically sustainable and environmentally responsible civil aviation sector.” Extracted from ICAO website in January 2018; more information is available on “<https://www.icao.int/about-icao/Pages/default.aspx>”

¹⁵ See more at “<https://www.icao.int/ChicagoConference/Pages/chicago-conference-introduction.aspx>”

¹⁶ See more at “<https://www.icao.int/publications/pages/doc7300.aspx>”

¹⁷ See more at “https://www.icao.int/secretariat/legal/List%20of%20Parties/Chicago_EN.pdf”

rusty bilateral air services agreements system that governs air transport relations between states. Articles 1 and 6 of the Convention stipulate that signatory states “recognize that every State has complete and exclusive sovereignty over the airspace above its territory”, and that scheduled air services “may be operated over or into the territory of a contracting state” only “with the special permission or other authorization of that State, and in accordance with the terms of such permission or authorization.”¹⁸ The first article of the “Chicago Convention” replicates the language of the “Paris Convention” by reinstating the rule of customary international law. Article six of the convention bars scheduled flights unless permission or authorization is granted from the “state in whose territory an aircraft wishes to fly, and only in accordance with the terms established by that State” (Chicago Convention).

Professor Adrianus Groenewege notes that during the Chicago discussions, the US was in favor of a global pro-competitive policy in an open skies environment, in which market forces would determine allocated capacity and fares without government intervention and with unrestricted access to foreign destinations by granting the five freedoms of the air¹⁹. On the other hand, the UK promoted a government-controlled system to regulate international air transport. This system would require an international regulatory body to regulate routes, carrying capacities and fares (Groenewege, 1996). Despite the prolonged discussions, neither the US liberal multilateral approach nor the UK protective regulatory structure for the global air transport was adopted. The

¹⁸ To review the full “Chicago Convention”, refer to
[“\[https://www.icao.int/publications/Documents/7300_orig.pdf\]\(https://www.icao.int/publications/Documents/7300_orig.pdf\)”](https://www.icao.int/publications/Documents/7300_orig.pdf)

¹⁹ There are nine “freedoms of the air”; the first freedom simply provides an airline of state A with the right to overfly state B; and the ninth freedom reflects the most liberalized form of freedom by allowing an airline of state A to operate in the domestic market of state B. To review all freedoms of the air, please refer to Appendix I

compromise result was the drafting of the Chicago Convention in addition to two subsidiary agreements. The “International Air Services Transit Agreement” (IASTA) that grants the first and second technical freedoms became effective in 1945²⁰. Whereas, the “International Air Transport Agreement” that grants the “five freedoms”, was not enforced due to a low number of states ratifying it.

Anthony Sampson, author of “Empires of The Sky” book, explains that the UK believed that the Chicago Convention would regulate global air transport in the direction that will "provide its aviation industry with a much-needed period of recovery, which would allow it to survive direct competition with its American counterpart" (1985). Good et al. highlight the difference in competitiveness amongst air carriers led to the adoption of restrictive competition rules, which was evident during the Chicago discussions (1993). Even the US liberal approach held a protectionist dimension. Good et al. argue that the available literature usually compares the US liberalism to the British desire for regulation; however, they ignore a critical reservation raised by the US (1993). Although the US called for a liberal regime, it stressed that route determination or approval among states must remain under the bilateral track between sovereign states. At that time, the United States with its large fleet of aircraft argued for an open skies international environment in spite of resistance from other industrialized countries, which were recovering from the second world war, and less-developed states that lacked an air transport industry and which “feared that they would be permanently excluded under an open skies policy” (Good et al., 1993).

²⁰ See more at “https://www.icao.int/secretariat/legal>List%20of%20Parties/Transit_EN.pdf”

2.4.3 International Air Law

Cooper emphasizes the following four “basic principles of international air law”:

- *“Territorial Sovereignty: Every State has, to the exclusion of all other States, the unilateral and absolute right to permit or deny entry into the area recognized as its territory and similar right to control all movements within such territory.*
- *National Airspace: The territory of a sovereign State is three dimensional, including within such territory the airspace above its national lands and its internal and territorial waters.*
- *Freedom of the Seas: Navigation on the surface of the high seas and flight above such seas are free for the use of all.*
- *Nationality of Aircraft: Aircraft have the characteristic of nationality similar to that developed in maritime law applicable to ships. Thus aircraft have normally a special relationship to a particular State which is entitled to make effective the privileges to which such aircraft may be entitled and such State is also reciprocally responsible for the international good conduct of such aircraft.” (1967)*

Paul Stephen Dempsey, Professor and Director Emeritus at the “Institute of Air & Space Law McGill University”, stresses that the Chicago Convention, which replaced the Paris Convention, is the “source of international air law (Articles 1-42)” and the “constitution of ICAO (Articles 43-96)”.²¹ Former ICAO Council President Assad Kotaite notes in his memoirs that adherence to international law by states is on a voluntary basis and not because of external pressures (2013). He highlights that international law becomes obligatory when states ratify conventions and treaties, and at the same time international law is voluntary because states adhere to such conventions and treaties based on their own will. Although ICAO lacks enforcement power, Kotaite

²¹ See more on “<http://www.mcgill.ca/iasl/files/iasl/ASPL633-Chicago-Convention.pdf>”

argues that the weakness of international law is also its strength, in the sense that states are under pressure to work collectively for the common interest and on an equal basis.

2.5 Development of Air Transport Relations Between States After The Chicago Convention

This section highlights how air transport relations have evolved following the signing of the “Chicago Convention”, which laid down the principle of the jurisdiction of states to regulate air transport services between each other at bilateral or multilateral levels. The study will emphasize how bilateral air transport agreements between states have become the norm to regulate the operations of air services between the states by designating the airlines that are permitted to operate scheduled services, regulating their tariffs, capacity, frequency, freedoms, and other economic areas (Lissitzyn, 1964).

2.5.1 Bermuda Agreements

The failure of reaching a global agreement on the regulation of (economic) air services at the Chicago Convention prompted states to seek bilateralism by granting each other commercial traffic rights mainly on reciprocal basis through what is known as bilateral Air Services or Air Transport Agreements (ASA or ATA). In 1946, the US and the UK signed in Bermuda the “Agreement between the government of the United Kingdom and the government of the United States relating to Air Services between their respective Territories”²². The agreement came to be known as Bermuda I before being replaced by Bermuda II²³ that was signed in 1977, becoming effective in 1978.

Cooper stresses that the principles of Bermuda I do not reflect the ones that the UK or the US stood for during the Chicago talks, but rather an agreed compromise (1946),

²² See more at “<https://www.state.gov/e/eb/rls/othr/ata/z/za/114287.htm>”

²³ See more at “<https://www.state.gov/e/eb/rls/othr/ata/u/uk/176322.htm>”

especially when it came to the economic regulation of international air transport services. Moreover, Dr. Ruwantissa Abeyratne emphasizes the importance of the Bermuda agreement because “it represented a compromise between the philosophies of the two States that had been so divergent during the Chicago Convention” (1994). An agreement was achieved; however, Bermuda negotiations witnessed many attempts by both parties “to outflank the other in order to achieve its aim: unrestricted competition in one case and regulated operation in the other” (Nayar, 1995). The UK tried to use the negotiating power of the Commonwealth against the US. However, the latter was able to gain the upper hand after the former sought a 3.75 billion US Dollar-loan from the US, in which the US linked the loan approval with the signature of an aviation pact²⁴.

In the aftermath of the conclusion of Bermuda I agreement, the adopted text constituted a draft text that was accepted as a prototype for bilateral ASA negotiations by the UK, US, and other states. The agreement was constructed on the following principles: first, tariffs to be government-controlled under so-called double approval regime²⁵. Second, airlines to determine their frequency and capacity according to market demand. Third, states to consider the multiple designation of airlines²⁶. Fourth, states to allocate routes of operation between them²⁷. Last, the UK agreed to grant the US fifth freedom rights²⁸.

²⁴ See more on the negotiations between both parties in “David MacKenzie Canada and International Civil Aviation, 1932-1948” (1989) pages 213-218.

²⁵ The agreement gave permission to IATA to set international tariffs, which airlines might use before taking a final approval from the civil aviation authorities of both states.

²⁶ An airline can only operate a scheduled international air service between two states if it is a designated airline named in the bilateral agreement. Bermuda I allowed for designating several airlines.

²⁷ Airport gateways for scheduled air services to be listed in the agreement.

²⁸ Fifth freedom rights gave the ability for US airlines to put down and to take on traffic in the UK coming from or destined to a third state.

Thirty years after it signed the agreement, the UK became disgruntled with several of its provisions. This prompted the UK to renounce the agreement and insist on renegotiating its terms (Nayar, 1995). The new round of negotiations led to the signature of Bermuda II²⁹ on 23 July 1977, which has been revised several times since then. Bermuda II differs from the former version in three primary aspects: First, multiple designation became limited for specific passenger and combination transatlantic air routes. Second, additional consultative procedures were set out to tackle excess capacity in the transatlantic market. Third, an annex was introduced that covered US-UK transatlantic cargo operations³⁰.

Nayar stresses that the Bermuda agreements are often “represented as marking the triumph of bilateralism over multilateralism, underlining the continuing relevance of air sovereignty as the foundation of the IAS [International Aviation System]”, which “testifies to the absence of a [global] regime rather than the presence of one” (1995). He adds that this is true for the form of the agreement, but its content somehow “reoriented the prospective IAS from mercantilism toward liberalism-at least as far as the two leading aviation powers were concerned” (1995).

2.5.2 Open Skies Agreements (OSAs)

Open skies agreements are air transport agreements that liberalize the rules for international aviation markets in bilateral or multilateral tracks. This type of liberal arrangements in air transport was first introduced during the Chicago Convention, although this approach was rejected back then. For more than 30 years following the

²⁹ Access the Bermuda II Agreement through the following link
“<https://www.state.gov/e/eb/rls/othr/ata/u/uk/176322.htm>”

³⁰ Refer to Airlines For America comparison at “<http://airlines.org/glossary/bermuda-ii-agreement/>”

Chicago talks, bilateral air transport relations between states prevailed mainly in the area of economic regulation of air services between bilateral parties. Clifford Winston Jia and Yan highlight that President Carter's administration advocated open skies agreements that "freed market forces to be the most important determinants of fares and capacity" (Winston, and Yan, 2015). Under Carter's presidency (1977-1981), the US domestic market was deregulated, which eased market entry and government control over the industry at a local level. The US deregulation of its domestic market in the late 1970s, which was followed by the EU liberalization kicked off a more liberal approach to regulating commercial air transport.

Deregulation and liberalization do not entail the same meaning. While deregulation refers to the removal of government control in the economic regulation of domestic air transport market, liberalization is associated with the international market, leaving international air operations open to market forces. The Netherlands was the first European state to conclude with the US an open skies agreement in 1992, which was also the first US OSA to be concluded³¹. Air transport relations started to witness a new era in the 1990s during which open skies arrangements emerged one after another, either within bilateral or multilateral frameworks.

Other countries have promoted unilateral "open skies" policies in the pursuit of boosting the country's economy and connection with other states. Lebanon is one of many states that have adopted such a unilateral policy. In the year 2000, Lebanon's newly-formed cabinet implemented this policy as part of a series of economic reforms

³¹ Review US OSAs in chronological order on "<https://www.state.gov/e/eb/rls/othr/ata/267129.htm>"

(Baaj, 2002). The adoption of this liberalization policy instantly lifted restrictions on foreign airlines' operational capacity and frequency, relating to "Third, Fourth and Fifth Freedom" traffic rights³². Bahrain is also another example that adopted the open skies policy officially in October 2001 and removed all restrictions on the number of flights and aircraft types to and from Bahrain.

2.5.3 Rise of Regionalism

During the Chicago Convention and for many years afterwards the US enjoyed a hegemonic position within the air transport sector. American hegemony in this sphere was part of American dominance over the world economy of the second world war. The United States had the world's largest commercial air fleet. Nevertheless, its dominance was not complete, for the United Kingdom and the countries of the British Commonwealth constituted a partial counterweight to US dominance. The deregulation in the US and the integration of European states into a single air market promoted other states to engage in similar paths. Especially after the European experience, other regional socio-economic and political groupings worked on concluding air transport treaties that could recreate the EU experience. For example, the following regional (multilateral) agreements were signed, the "Decision on Integration of Air Transport of the Andean Community" (1991), Agreement on the Liberalization of Air Transport between the Arab States (Arab League) (2004), ASEAN Multilateral Agreement on Air Services (2008)³³.

³² Lebanon's Open Skies Policy (Case Study). (2007, July). Retrieved April 20, 2018, from ICAO Secretariat website: "https://www.icao.int/sustainability/CaseStudies/StatesReplies/Lebanon_EN.pdf"

³³ See more at "<https://www.icao.int/sustainability/Documents/RegionalAgreements.pdf>"

ICAO defines a (multilateral) treaty as “typically the final product of a diplomatic conference, a meeting of sovereign States convened for the purpose of adopting a multilateral legal instrument (e.g. the Convention on International Civil Aviation, the International Air Services Transit Agreement, and other multilateral treaties)”³⁴. A fairly large number of multilateral agreements for liberalizing the air transport sector were concluded since the late eighties³⁵. One example would be the establishment of the Andean Pact in 1991, comprising the states of Bolivia, Colombia, Ecuador, Peru, and Venezuela. This pact tackled issues of commercial air transport. Another example is in the Arab world, in which an instrument was adopted by Arab states in Damascus in 2004. “The implementation of the Damascus Convention of 2004, that is a Multilateral Agreement for the liberalization of Air Transport in the Arab world, is still very limited in spite of taking effect since 2007”³⁶. The Convention was “drafted based on the common policies of the EU for the EU single aviation market”³⁷ but was only ratified by eight Arab states³⁸.

Professor Brahim Elmorchid et al. tackle in their paper “Arab Passengers’ Airlines Framework and Performance: A Cross Countries Analysis” the liberalization attempts of Arab states. They note that “while in the USA, the EU or the ASEAN

³⁴ “*Manual on the Regulation of International Air Transport*” (2nd ed., pp. 4.1-8-2.1-9, Publication No. Doc 9626). (2004). International Civil Aviation Organization. Retrieved from:

[“https://www.icao.int/Meetings/atconf6/Documents/Doc_9626_en.pdf”](https://www.icao.int/Meetings/atconf6/Documents/Doc_9626_en.pdf)

³⁵ ICAO has compiled a list of such multilateral / regional arrangements and commitments for liberalization, which can be reviewed on
[“https://www.icao.int/sustainability/SiteAssets/pages/Eap_ER_Databases/Multilateral%20Agreements%20List_Sept_2016.pdf”](https://www.icao.int/sustainability/SiteAssets/pages/Eap_ER_Databases/Multilateral%20Agreements%20List_Sept_2016.pdf)

³⁶ AACO Annual Report 2013. (2013). Retrieved from [“http://aacoo.org/Library/Assets/Annual_Report_English_2013.pdf”](http://aacoo.org/Library/Assets/Annual_Report_English_2013.pdf)

³⁷ AACO Annual Report 2012. (2012). Retrieved from [“http://aacoo.org/Library/Assets/Annual_Report_English_2012.pdf”](http://aacoo.org/Library/Assets/Annual_Report_English_2012.pdf)

³⁸ The following Arab states have ratified Damascus Convention: “Lebanon, Jordan, Syria, Palestine, Oman, Yemen, United Arab Emirates and Morocco”.

different strategies have been adopted to face the new situation, Arab countries show no clear strategy” (2013). They add that Arab states “entered this arena in dispersed order” and “while the Arab Civil Aviation Council (ACAC) and Arab Air Carriers Organization (AACO) have agreed that bilateral OSAs should be started among Arab countries, arrangement dates were not respected and some countries have, even, unilaterally concluded OSAs with nonArab partners” (Elmorchid, et al., 2013).

2.6 Economic Regulation of Air Transport

Over seventy years after being in force³⁹, several scholars question the effectiveness of Chicago’s old international aviation doctrine. It was put in the early days of aviation when states were mainly focused on finalizing an agreement that ensures a safe and secure commercial air transport after the Second World War. The governments put scant attention for setting up a global liberal agreement that better describe the nature of aviation as the real-world wide web in connecting people and businesses. The Chicago Convention was a political compromise between states of conflicting interests regarding the air transport sector. The states that attended the convention held deeply contradictory views on the level of state-involvement in the operation of and the support to air transport institutions (Cooper, 1946).

National sovereignty in the ‘Chicago Convention’ terms for aviation protects - as much as possible - nations’ prestige. The principles laid by the Convention encourages most of its parties to remain satisfied with the status quo. Lehner among others argue that the first clause of the convention greatly obstructed “the development of a

³⁹ The Chicago Convention was signed in 1944 but came into effect on 4 April 1947; check the following link to review ICAO status report of the governments that ratified the Convention [“http://www.icao.int/publications/Documents/chicago.pdf”](http://www.icao.int/publications/Documents/chicago.pdf)

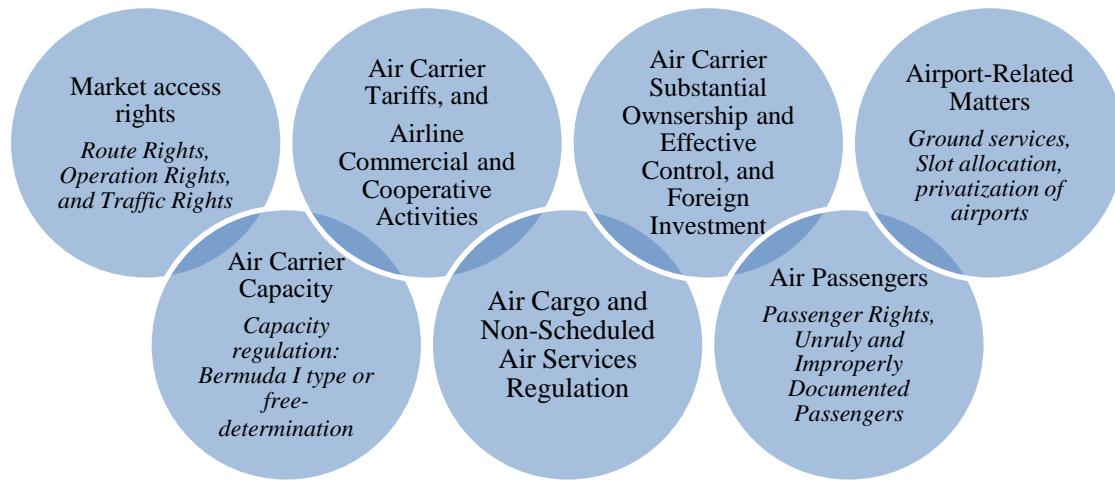
multilateral agreement on international traffic rights and has served as the basis for state protection and regulation of aviation markets” (1995). This could be a primary reason for the absence of a global understanding on many controversial topics, including critical aspects of economic regulation of the industry that covers market access, fair competition, and ownership and control (Wang, 2004). ICAO remains of rather limited effectiveness in addressing and leading the economic regulation of air transport; whereas, ICAO’s role in addressing such issues must be stepped up (Abeyratne, 2014).

Professor Vicki Golich⁴⁰ claims that civil aviation is often used as an instrument for both domestic and foreign policy purposes (1989). She refers to European countries using their state-owned airlines as political instruments by which they developed air routes to link colonies and former colonies to the colonial powers (1989). Although international aviation is connected to various vital “economic and ecological issue-areas or ‘cobwebs’ such as energy, balance of payments, and environmental protection”, it is different from most businesses that engage in the rendering of services or production of goods by “directly engaging the national security interests, the sovereignty, and the prestige of almost all countries of the world” (Jönsson, 1981). Politics was even evident in Bermuda talks. Nayar, for example, highlights that “Bermuda is an instructive lesson in linkage politics and in the exercise of coercive economic diplomacy, with American determination all the more remarkable since it was applied by one ally-the hegemonic power-to the other” (1995). The economic issues related to the regulation of air transport services within the context of political diplomacy between states are illustrated in Figure

⁴⁰ See more about Dr. Golich at “<https://www.msudenver.edu/academic-affairs/about/provostandevpaagolich>”

1 below. Such issues have been left for states to agree on a bilateral level with no global authority to monitor, implement, or resolve arising issues in the economic regulation of air transport.

Figure 1: Issues Related to “Economic Regulation of Air Transport”



Source: ICAO Manual Doc 9626

Not only did ICAO fail to obtain an authoritative role in the economic regulation of air transport but so did the WTO, which was established by the Uruguay Round of trade negotiations in 1995. The Round discussed trade in services, which resulted in the “General Agreement on Trade in Services” (GATS) coming into force⁴¹. In relation to air transport services, the Annex on air transport services⁴² only included what could be described as the “soft right” which are limited to “aircraft repair and maintenance; selling and marketing of air transport services; and computer reservation system services”. However, the Annex stipulates that a periodic review of the sector must be

⁴¹ Check more on the Uruguay Round in “Spero, J. E., & Hart, J. A. (1997). *The politics of international economic relations*. New York: St. Martin's Press”.

⁴² See more on “https://www.wto.org/english/tratop_e/serv_e/9-anats_e.htm”

conducted at least every five years to consider “the possible further application of the Agreement in this sector” (Annex on Air Transport Services in GATS).

Noting that this text was adopted more than two decades ago, nothing has been changed in the Annex. This poses serious questions regarding the will of states to enhance WTO’s power in the “hard rights” of air transport services; such as market access, ownership and control, and competition laws. One of the main challenges that obstructs the expansion of the Annex was the conditional “*Most-Favoured Nation*” (MFN) clause of the GATS; however, ICAO suggests that the limitation in this could be surpassed⁴³.

Gerald Baliles, US politician and Chair of the National Airline Commission (during the tenure of President Clinton), underscores that “while the world is moving away from managed and protected trade in most goods and services, the air transportation by which people and products reach destinations and markets is still heavily regulated and often fiercely protected” (1997). In another study, Lehner highlights that “the fear of unrestricted competition, which favors the prevailing bilateral system in aviation, subtly employs the tempting themes of national security and national prestige” (Lehner, 1995). The air transport industry is presumed to be a global one; however, air transport operations remain purely trans-national due to the existence of the bilateral regime and the insistence of governments on maintaining national ownership of

⁴³ ICAO argues that “*Parties may make an exception to MFN for specific services by including that service in their exemption list. Thus, a party can vary the degree of its liberalization of a specific service by (1) filing an exemption from MFN for that service or (2) making specific commitments for market access and national treatment, including any conditions and limitations. This can result in variations in the obligations of different parties with respect to the same service, a circumstance that critics charge results in free riders, parties which enjoy liberalized access with regard to supplying a specific service in the territories of other parties without having to provide the same degree of liberalized access for that service in their own markets*” . ICAO Manual Doc 9626.

the bulk of the stocks of their airlines. This preoccupation with national ownership and national control impedes the process of multinationalism.

2.7 Summary

Since the inauguration of civil aviation activities, the international aviation regime still stands on the same notion of absolute sovereignty of states. Although countries have adopted various policies for liberalizing their skies at uneven levels or concluded “open skies” agreements amongst each other --also at varying levels--, air transport remains to a large extent bounded by a regime that was formulated immediately after WWI (Paris Convention) and WWII (Chicago Convention). During these post war times, there was no notion of globalization in the sense we have today, and security issues of civil aviation dominated the agenda of states’ priorities in setting up the international air transport regime. Little consideration was given to notions of trade, freedom of movement and competitive markets. The maintenance of peace and state sovereignty were of the upmost importance.

Piermartini and Rousová argue that the outcome of liberalization agendas adopted by states is an “unevenly liberalized global aviation market”; where high-income countries tend to sign less liberal agreements with low-income countries than middle- and high-income countries” (2013). States are failing to change this regime; however, “what is happening is a change in the regime instead of the regime” (Jönsson, 1987). In other words, the regime itself is evolving, albeit slowly, within the boundaries of state sovereignty.

Professor David Gillen et al. highlight that the majority of bilateral agreements resemble a “story of protecting incumbent carriers against competition rather than

protecting competition against incumbent carriers” (2001). Hooper concludes that it would be no surprise to see the ongoing policy debates dominated by industry participants are highly revolving on matters related to ‘safeguards’, ‘fair competition’ and ‘level playing fields’, which ultimately reflect the interests of their promoters “rather than on advancement of fundamental norms and principles” (Hooper, 2014). Mr. Teffaha highlights in his foreword to AACO’s AATS “Arab Air Transport Statistics 2017” that drops, falls, disappointment, or resistance to change happen during each evolution and development phase; however, the history of human kind was never a history of status quo but rather of development; “what was unleashed by aviation and [the] internet cannot be bottled by going back to protectionism and encapsulation”⁴⁴.

⁴⁴ AACO Arab Air Transport Statistics (AATS) 2017

Chapter III

The European Union and Air Transport

3.1 Background

This chapter will discuss the establishment of the “European Community”, which witnessed the first form of cooperation among several European states in the 1950s after the Second World War. It will further highlight the current regulatory structure of the supranational EU policy and rule-making. The second part of this chapter will tackle the liberalization of the EU air transport and its integration into a single and open market. The developments that followed the EU liberalization, and the formation the “EU External Aviation Policy” following the “open skies” judgments of the “European Court of Justice” in November 2002 will be also studied.

3.2 Foundation of the EU

The “founding fathers of the EU”⁴⁵ aspired for a peaceful, united and prosperous Europe after the war. These leaders among others envisioned and worked towards EU integration; Winston Churchill called for a “United States of Europe” and Robert Schuman was the architect of the European integration project. The French Foreign Minister Schuman mentioned in his famous declaration in 1950 that “there first must be a Europe” for peace to have a chance (Hallstein, 1963). The French ambassador to the US (1944-1954) Henri Bonnet highlights that Europe was coming out of a destructive WWII, Europe found itself “half ruined, shaken morally as well as politically, weakened

⁴⁵ “Konrad Adenauer, Joseph Bech, Johan Willem Beyen, Winston Churchill, Alcide De Gasperi, Walter Hallstein, Sicco Mansholt, Jean Monnet, Robert Schuman, Paul-Henri Spaak, and Altiero Spinelli”. Retrieved from the “The European Union Explained: The founding fathers of the EU” at [“http://europa.rs/images/publikacije/osnivaci_EU_en.pdf”](http://europa.rs/images/publikacije/osnivaci_EU_en.pdf)

and unable to defend alone by her own means independence and her security” (1951).

He adds that the ‘Schuman Plan’ came out as the first approach towards European Unity.

One of the first forms of cooperation that took place among few European countries after the end of the Second World War was in April 1951, in which France, the Federal Republic of Germany (West Germany), Belgium, Italy, Luxembourg, and the Netherlands signed a 50-year Treaty establishing the “European Coal and Steel Community” (ESCS) in Paris, which became effective in July 1952. By 1955, the foreign ministers of those 6 European countries decided to extend their coal and steel collaboration to involve the whole economy. In 1957, the six states signed in Rome the Treaties establishing the “European Economic Community” (EEC - Treaty of Rome)⁴⁶ and the “European Atomic Energy Community” (Euratom), which became effective in the beginning of 1958. The European Community continued to develop as the years passed. In 1967, a single Council and a single Commission were created for the three existing communities (ESCS, EEC, and Euratom).

In 1973 the first signs of other nations aspiring to join the Community was apparent, by which Denmark, Ireland, and the UK joined the European communities, bringing up their total number to 9 states. In the 1980s, Greece, Spain, and Portugal joined the European communities and the Schengen Agreement was signed. In the 1990s, Germany was unified; the “Maastricht Treaty (Treaty on European Union)” was signed and the single market was created. Austria, Finland, and Sweden joined the EU, a partnership between the EU and the states residing on the southern shore of the

⁴⁶ See more at “<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=legisum:xy0023>”

Mediterranean was launched in Barcelona and several countries adopted the Euro. In the 2000s, the Treaty of Nice was signed, Euro notes and coins were introduced and the “Czech Republic, Estonia, Cyprus, Latvia, Lithuania, Hungary, Malta, Poland, Slovenia, Slovakia, Bulgaria, and Romania” joined the EU. Furthermore, the “Treaty of Lisbon” was signed. During this decade, more EU countries have adopted the Euro; Croatia joined the EU; and the UK is planning to exit the EU following a local referendum, signaling the first ‘exit’ from the union since its inception.

3.3 Current Regulatory Structure

The EU is more than a simple confederation of states, yet not to the extent of being a federal state. The EU structure is exceptional and does not classify under any traditional legal category. Its decision-making process has been always evolving since its inception. The exceptional feature of the EU is that it holds a group of sovereign and independent states, who have shared a part of their sovereignty to gain strength and the benefits of size. In practice, pooling sovereignty means that each EU member state delegates some of their decision-making authority “to the shared institutions they have created, so that decisions on specific matters of joint interest can be made democratically at European level”⁴⁷.

⁴⁷ See more on “*How The European Union Works*” at
[“https://europa.rs/images/publikacije/HTEUW_How_the_EU_Works.pdf”](https://europa.rs/images/publikacije/HTEUW_How_the_EU_Works.pdf)

Each decision adopted by EU institutions is founded on treaties that have been endorsed by all EU states voluntarily and democratically. The treaties⁴⁸ put down the Union objectives, the rules and regulation for EU institutes and define how decisions should be taken and the relationship between the EU and its member states. Known as “primary legislation”, the treaties lay the cornerstone for “secondary legislation” which directly impacts the daily lives of EU citizens mainly in the forms of regulations, directives or recommendations adopted by EU institutions as outlined below:

- The “European Council”: It is the EU’s highest political institution. It sets EU goals and the roadmap for achieving them. It advocates the EU’s main policy initiatives and adopts decisions on topics that the “Council” failed to agree on. The “European Council” also follows up on current international issues.
- The “Council”: Also known as the “Council of Ministers”; its main task is to approve EU laws. This responsibility is mainly shared with the “European Parliament”. In addition, the “Council” signs international agreements that have been negotiated by the “Commission”.
- The “European Parliament” (EP): It supervises the EU’s activities and, together with the “Council”, it adopts EU legislation.

⁴⁸ The main EU treaties include: The “Treaty of Paris”, establishing the “European Coal and Steel Community”, entered into force in 1952; the “Treaties of Rome”, establishing the “European Economic Community” (EEC) and the “European Atomic Energy Community” (Euratom), which became effective in 1958; the “Single European Act” (SEA) of 1986 and which became effective in 1987. SEA amended the EEC Treaty and paved the way for completing the single market; the “Treaty on European Union” (TEU) — the “Maastricht Treaty” — was signed in Maastricht and was implemented as of 1993. It established the EU and gave its Parliament more say in decision-making and added new policy areas of cooperation; the “Treaty of Amsterdam” came into force in 1999 to amend previous treaties; the “Treaty of Nice” entered into force in 2003. It streamlined the EU institutional system; the “Treaty of Lisbon” came into force in 2009. It simplified voting rules and working methods, created a President of the “European Council” and presented new structures with an aim a stronger EU actor in the global arena.

- The “European Commission” (EC): It owns the exclusive right for proposing new EU legislation. EC proposals are sent to the Council and Parliament for discussion and endorsement (“the trilogues system”).
- The “Court of Justice”: It ensures EU law compliance and that EU Treaties are correctly interpreted and applied.
- The “European Central Bank”: It manages the Euro and monetary policy of the EU.
- The “Court of Auditors”: It ensures that all EU revenue has been received and oversees its expenditure.
- Other Bodies and Agencies (The “European Economic and Social Committee”, the “Committee of the Regions”, the “European Investment Bank”, the “European Ombudsman”, the “European Data Protection Supervisor”, and many EU agencies such as the “European Aviation Safety Agency”, the “European Chemicals Agency”, the “European Environment Agency”, and others).

The decision-making process at the supranational level includes several European institutions, mainly the EP, the European Council, the Council, and the EC. The latter is the institution that proposes new laws for the EP and Council to endorse them, which is also referred to as the *trilogue* system (Kleine, 2013). Implementation of such laws is done by the member states and the Commission. The legislative process produces different legal acts that are enforced differently. A *regulation* is a legal act that applies to and binds all EU states. They are not required to pass regulations into their national laws but may require amending their national laws to avoid conflicting with the regulation. A *directive* is a further legal act that binds EU states, or some of them, to accomplish an

agreed objective. Directives are usually passed into EU states' national laws; noting that a directive highlights an objective to be achieved and it will be up to each member state to decide individually on how to reach this objective. A *decision* can be addressed to any entity be it a member state, enterprise, individuals, or groups of people. Decisions are binding, for example, a decision on a proposed merger between two companies.

Recommendations and *opinions* do not hold any binding force⁴⁹.

3.4 The EU Air Transport Sector

Aviation policies differ among states with varying perceptions on liberalization levels.

The European Union (EU) is a pioneering example in international air liberalization although the practice of deregulation took place firstly at a state level in the US domestic market in 1979. This study will highlight how the EU aviation policy was formulated, how it evolved and its successes and shortcomings.

Following such a review, the thesis will better explain how the power-sharing model of the EU (national governments and supranational authority) reflect on air transport. Žabokrtský stresses that the EU air transport policy has brought very positive results to the passengers; however, “there is the worrying negative impact on airlines and airports, resulting mainly in the endangered competitiveness of the European aviation industry” (2011). The impact of such structure will be studied for EU vis-à-vis non-EU airlines.

⁴⁹ See more on “How the European Union Works” at
[“https://europa.rs/images/publikacije/HTEUW_How_the_EU_Works.pdf”](https://europa.rs/images/publikacije/HTEUW_How_the_EU_Works.pdf)

For more than thirty years, the competition rules laid down in the “Treaty of Rome of 1957”⁵⁰ were not applied to the air transport sector as per Article 84. Commercial air services remained outside the scope of the “Treaty of Rome” due to the lack of a liberalized market. Flag carriers were national symbols of prestige and critical economic and political assets, which made it impossible for a liberalized community market. The second article of the EC Treaty outlines the community’s main objective to establish a single market and the implementation of unified policies across the different sectors of the economy. A common transport policy was mentioned in Article 3; however, air transport was ruled out as a protective measure by most states to seclude their national airlines from foreign competition due to the variance in airlines’ competitiveness and development. As indicated by Bernardine Adkins: “At the time of signature of the Treaty it was considered that the introduction of basic Community principles such as free movement to the sector, would create major disturbances in a highly regulated area of great strategic importance” (1994). Dinos Stasinopoulos, former “Principal Administrator of the Transport Directorate General of the European Commission”, highlighted in 1992 that the community's objectives behind liberalizing its aviation sector were “to unleash market forces to allow expansion, innovation and greater competition in the aviation sector”, which is expected to result in cheaper fares and more consumer choice and better services. However, Stasinopoulos raised his concerns for two interrelated factors that may hinder the benefits of liberalization, most

⁵⁰ The full treaty is available here
[“\[https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf\]\(https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf\)”](https://ec.europa.eu/romania/sites/romania/files/tratatul_de_la_roma.pdf)

importantly: “the corporate restructuring of the airline industry” and capacity shortage at congested airports (1992).

3.4.1 Liberalization of the EU Air Transport Sector: Three Aviation Packages

The liberalization of the EU air transport sector began slowly in 1983 following a Council Directive, which authorized the operation “of scheduled inter-regional air services of passengers, mail and cargo” between member states of the European community (Žabokrtský, 2011). The first major European step towards the opening of its air transport market was in 1987 following the adoption of the first air liberalization package of measures, which allowed more flexibility in setting air fares, sharing of seat capacity and market access.

In the second package of measures of June 1990, the transport ministers of the European community took another cautious forward step towards opening up the internal European markets. European states loosened their authority on tariff fixing and airlines’ rights to choose the type of service to offer, the routes and the pick-up and drop-off of passengers in the territories of other member states. Moreover, the second package of measures included a commitment from the community states to legally bind themselves to full air transport liberalization at a supranational level by 1 January 1993 (Button, 2001).

Full liberalization of the air transport industry within the community began in early 1993. This liberalization was part of the third package that ensured airlines’ freedom to fix their own fares and ended the capacity-sharing arrangements made with the governments, which used to guarantee a given traffic share to each country on a route. The third package also created new opportunities to operate within and between

other markets of the European community under common rules for licensing air carriers. Furthermore, the right to cabotage, which is the right for an airline of a member state to operate a route within another member state, was gradually introduced until becoming fully effective in April 1997 (Button, 2001).

3.4.2 The EU After Liberalization

Prior to the establishment of a single European air transport market, the sector was dominated by state-backed national carriers and many barriers stood in the face of new entrants, which reduced their competitiveness against incumbent airlines in an overregulated market. Air liberalization within the Community became a prerequisite to bring the air transport sector in harmony with the objectives of the European Community Treaty. The commitment of the Community, along with the support of member states, to competition rules paved the way for liberalizing the air transport sector at a supranational level. As highlighted by Schmidt and Giorgi prior to the formulation of the EU External Aviation Policy, the absence of a suitable regulatory framework for air transport in the community was the missing cornerstone to establish external relations at a supranational level (2001).

Violeta Bulc, Europe's Commissioner for Mobility and Transport (2014-Present), said on the occasion of *25 Years of EU Aviation*: “Today it is difficult to realise how much air travel has changed thanks to the European Union. The creation of the single market revolutionised mobility, not only providing cheaper and safer air travel, but also more jobs and economic growth...”⁵¹. The number of travelers greatly increased after liberalization. The Eurostat highlights that in 2016, more than 1 billion passengers

⁵¹ Retrieved from “https://ec.europa.eu/transport/modes/air/25years-eu-aviation_en” on 22 August 2018.

passed through 450 EU airports (17 percent on domestic routes within EU states, 47 percent on intra-European routes between EU states and 36 percent on extra-EU routes outside the EU), which is more than triple the number of EU passengers in 1992. This figure highlights that almost two-thirds of air passenger traffic is inside the EU.

3.5 Formation of The “EU External Aviation Policy”

The “EU External Aviation Policy” of 2005 was formulated following the “open skies” judgments of the ECJ on 5 November 2002⁵². The policy was developed by the Council and the EC. It was defined as a Road Map on the following three pillars:

1. Amending existing bilateral air services agreements signed between individual EU member states and third countries to be in line with EU law following the 2002 judgement. Such amendments under the so-called Horizontal Agreements recognizes the "EU nature" in bilateral agreements, which eventually allow any EU airline to operate flights between any EU country and a third country that has accepted to recognize *EU airlines* as the designated carriers rather than the usual designation of *national airlines*.
2. The establishment of a “Common Aviation Area” with the EU's neighboring countries.

⁵² “The “Court of Justice of the European Union” (CJEU) rulings for the following cases “C-466/98, C-467/98, C-468/98, C-469/98, C-471/98, C-472/98, C-475/98, C-476/98” [“open skies” judgments of 5 November 2002 of the CJEU], are available at “<http://eur-lex.europa.eu/collection/eu-law/eu-case-law.html>”. These judgements led to the inception of the “EU External Aviation Policy”. Before these judgements, international air services were always regulated by bilateral agreements between states. Legally, these judgments forbid EU Member States to act in isolation when negotiating international air services agreements. Such negotiations must be conducted in cooperation and coordination between the EC and EU Member States. See more on “<https://curia.europa.eu/en/actu/communiques/cp02/aff/cp0289en.htm>”

3. The conclusion of comprehensive air transport agreements with strategic global partners (Geil, 2012).

In 2012 the European Commission (EC) Communication and Council decision revised the “EU External Aviation Policy”, which was adopted by the European Parliament in July 2013. Moreover, in 2015, the EC adopted an Aviation Strategy that tackled internal and external measures “to boost Europe's economy, strengthen its industrial base and reinforce its global leadership position”. This study will highlight how the EU aviation policy evolved and scrutinize its external dimension that involves three-tiered approaches which are as follows: i) comprehensive agreements with global partners; ii) establishing a “Common Aviation Area” with EU neighbors, and iii) Horizontal Agreements.

To our farthest knowledge, the available literature was not able to scrutinize the EU aviation policy and highlight the “EU need to tailor its [external] response to the challenges related to some of the strategic markets and partners...”⁵³. Literature still did not tackle the tailored approach of the EU towards third countries whether across its neighborhood, in the Balkans, Mediterranean area, or with global partners; such as the US, ASEAN states, Turkey, Brazil, UAE, and Qatar. This study will describe the Commission’s approach for a Common Aviation Area (CAA) that has been envisaged for the EU neighborhood. The CAA allows for the gradual market opening between the EU and its neighbors in tandem with regulatory convergence through the gradual implementation of EU aviation rules. The other EU approach is launching targeted

⁵³ See more “European Commission (2012). The EU’s External Aviation Policy - Addressing Future Challenges. Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions. Brussels, COM(2012) 556”

negotiations, which seek “to achieve agreements in the major regions of the world, with the aim of market access and strengthening the prospects for ensuring fair competition”⁵⁴.

EU member states can still undergo individual negotiations for bilateral air services agreements with third countries, until the Council grants the European Commission an authorization for negotiating an EU comprehensive air transport agreement. A comprehensive EU air transport agreement replaces the bilateral agreements concluded between each EU Member States and the specific third country or region. From the perspective of power distribution of negotiating policy agreements with third countries, Adrienne Héritier and Yannis Karagiannis conclude in their analysis that the Commission was successful by forming a strategic alliance with the ECJ in order to widen its realm of competences in the external dimension (2011). They add that the preferences of member states represented by the Council is for individual bilateral negotiations over Commission-led joint negotiations over no action (2011).

3.5.1 EU Common Aviation Area

The Common Aviation Area (CAA) allowed for steady market opening between the EU and a group of its neighboring countries. The Commission highlights that regulatory convergence through the gradual implementation of EU aviation rules provided more choices for consumers and new opportunities for airlines⁵⁵. The procedure of market liberalization and regulatory convergence happen in parallel as they allow fair

⁵⁴ See more at
“https://ec.europa.eu/transport/modes/air/international_aviation/external_aviation_policy/global_partners_en”, retrieved in November 2018.

⁵⁵ See more at
“https://ec.europa.eu/transport/modes/air/international_aviation/external_aviation_policy/neighbourhood_en”

competition and implementation of the joint measures and standards. This is implemented in sequential phases and through needed technical assistance to the partnering countries.

The EU believes that negotiations on a comprehensive air transport agreement promotes overall trade, economic and tourism relations with the concerned neighboring country. In 2006 the first CAA agreements were signed with Morocco and Western Balkan partners and has been implemented since then. Also, agreements with Jordan and Georgia were signed in 2010, and in 2012 the agreement with Moldova was signed and with Israel in 2013. An agreement has been initialed with Tunisia, and negotiations are still taking place with Azerbaijan, Ukraine, and Lebanon. There is almost no progress with the other neighbors, such as, Algeria, Egypt, Libya, and others. The ultimate EU CAA could include up to 60 states with a residential population of around 1 billion.

The European Commission issued in February 2004 a Communication for “*A Community aviation policy towards its neighbours*”⁵⁶. It included future members or participants in the “*Stabilisation and Association Process*”, partners in pan-European aviation co-operation, as well as Mediterranean partners that are part of the Barcelona Process and who have signed a Euro-Mediterranean Association Agreement with the Community. The Council of Ministers authorized in December 2004 the EC to conduct negotiations with eight South-East European partners⁵⁷ on a “European Common Aviation Area” (ECAA) agreement. Moreover, the Council of Ministers has put the year

⁵⁶ See more at “<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0074&from=EN>”

⁵⁷ “Albania, Bosnia and Herzegovina, Bulgaria, Croatia, the former Yugoslav Republic of Macedonia, Romania, Serbia and Montenegro and the U.N. Mission in Kosovo”.

2010 as the target date for finalizing the CAA with neighboring states. The deadline was not met by the Commission and it was revised afterwards to 2015. To date, the EU has failed to bring all its neighbors under the Common Aviation Area. The European Commission believes that CAA agreements will allow other parties to be fully involved in one of the most vital areas of the single market, which is air transport. This could provide an incentive to CAA participants to engage in further economic integration between EU and non-EU partner countries. It is noteworthy to highlight that air traffic between the EU and its neighbors resembles a big portion of the total traffic between the EU and third countries⁵⁸.

3.5.2 Comprehensive Agreements with Global Partners

The European Commission's "Mobility and Transport Directorate General" (DG MOVE) highlights that the third dimension of the EU external aviation policy is the conclusion of comprehensive air transport agreements that are targeted at global EU partners to achieve market access and strengthen the prospects for ensuring "fair competition in the most dynamic world markets, while at the same time helping to reform international civil aviation and promoting European regulations and industry"⁵⁹.

Comprehensive air transport agreements that are conducted by the EC on behalf of the EU member states entail wider arrangements than the so-called "open skies" agreements. Besides opening the skies, comprehensive agreements seek to establish a process that liberalizes ownership of airlines covered by the agreement and to agree on a course of regulatory convergence in matters related to safety, security, environment,

⁵⁸ See more at "<http://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52008DC0596>"

⁵⁹ Retrieved from the EC "Mobility and Transport Directorate" website on 31 July 2018 "https://ec.europa.eu/transport/modes/air/international aviation/external aviation policy/global partners_en"

competition, passenger rights, labor, and others – such agreements cannot be achieved at national levels. The Commission, in coordination with EU member states, identifies several major partners that are important to the EU and resemble a significant aviation interest to the Union. The Commission believes that negotiations under a single voice bring significant added value over traditional bilateral agreements.

Such agreements between the EU and global partners are limited in number. It could be noted that the only “groundbreaking” agreement, under this approach with global partners, was with US. In the span of more than 10 years, the EU was only able to conclude a few comprehensive air transport agreements⁶⁰. Despite having many important trade or strategic global partners, the mission to seal such agreements seem to carry a lot of preparations and challenges that will be highlighted in the following parts of this study.

3.6 Summary

Button writes that the US air transport industry deregulation in 1977 for cargo services and later in 1978 for passenger services has given birth to a new line of thinking about regulation (Button, 2001). The internal aviation market between EU states clearly instate an example of how European integration can result in creating a single market (Christidis, 2016). He adds: “Before 1992, the milestone year for the development of the EU Singe Market, the EU aviation market was fragmented among the national markets of its Member States, each adhering to a restrictive bilateral agreement with each of the other Member States. After 1992, all national markets of the EU Member States (which

⁶⁰ See more at
“https://ec.europa.eu/transport/modes/air/international_aviation/external_aviation_policy/global_partners_en”

eventually became 28) were merged into a single EU aviation market and all national carriers are considered as EU carriers”. Vincent and Stasinopoulos highlight that there were two events that happened in 1986, which gave a push to the establishment of a unified aviation policy in the EU, the first was the “Nouvelles Frontières”⁶¹ case and the second was the “European Council’s request that the Community take action on tariffs, capacity and access to the market” (1990).

While the EU relations with the US will be tackled in the coming chapter, it is noteworthy to mention that Héritier and Karagiannis argue that the “US government defected from the cartel equilibrium that had prevailed since 1944, and it did so by adopting a divide-and-rule strategy” to achieve “maximum concessions from individual European countries. Soon enough, however, the Europeans realized the unbalanced nature of US liberalism” (Héritier and Karagiannis, 2011). They note that the EC and the ECJ, led by France, stood up united “to negotiate with a single, winning voice”.

⁶¹ Read more about the case through “LiCalzi, J. O. (1986). Competition and Deregulation: Nouvelles Frontières for the EEC Air Transport Industry? *Fordham International Law Journal*, 10(4), 808-841. Retrieved from <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1164&context=ilj>.”

Chapter IV

Targeting Neighbors and Partners: Morocco and Lebanon – USA and UAE

4.1 Background

As mentioned earlier, Lehner among others argue that the current international regulatory regime obstructs the development of a multilateral (international) aviation agreement. An international agreement will reshape the current system into a system free from state protection and regulation of aviation markets (1995). In the absence of a global system that regulates air transport services, states, or groups of states, negotiate bilateral or multilateral agreements on the regulation of air transport services amongst them.

Christidis highlights that “national political and economic priorities are the main determinant” in international air transport negotiations, which are “often carried out in a context of a wide range of complicated international agreements” (2016). Taking the discussion into consideration, this chapter will study the EU air transport relations with four different states under two different approaches. Under the framework of the “Euro-Mediterranean Partnership”, the EU air transport relations with each of Morocco and Lebanon will be discussed. The Euro-Mediterranean area is part of a wider area of neighboring states that are a target to be part of the Common Aviation Area (CAA). As envisaged by the EU, the CAA can encompass up to 60 states and more than 1 billion inhabitants (Mediterranean states, ECAA states -South-Eastern and Northern Europe -,

other neighboring states). Under the “tailored”⁶² EU approach towards its global aviation partners, the cases of the US and the UAE will be examined.

While this chapter examines the EU air transport relations in the current international air transport regime, the four cases included in this chapter provide a valuable insight on the external aviation role of the EC. The Commission had to convince the EU Member States to cede some of their sovereignty rights by authorizing the Commission to negotiate on their behalf collective air transport agreements with third countries or with other supranational bodies (such as ASEAN) in an international system that is based on the principle of sovereignty. It was a long fight for the Commission to receive this right. EU Transport Commissioner Neil Kinnock was the first to advocate for the Commission’s right to negotiate overall air transport agreements with non-EU states. Kinnock began to advocate for this right in the aftermath of the US “divide-and-rule strategy” pursued in the late nineties against European countries by sealing individual open skies agreements with several EU states (Kassim and Stevens, 2010).

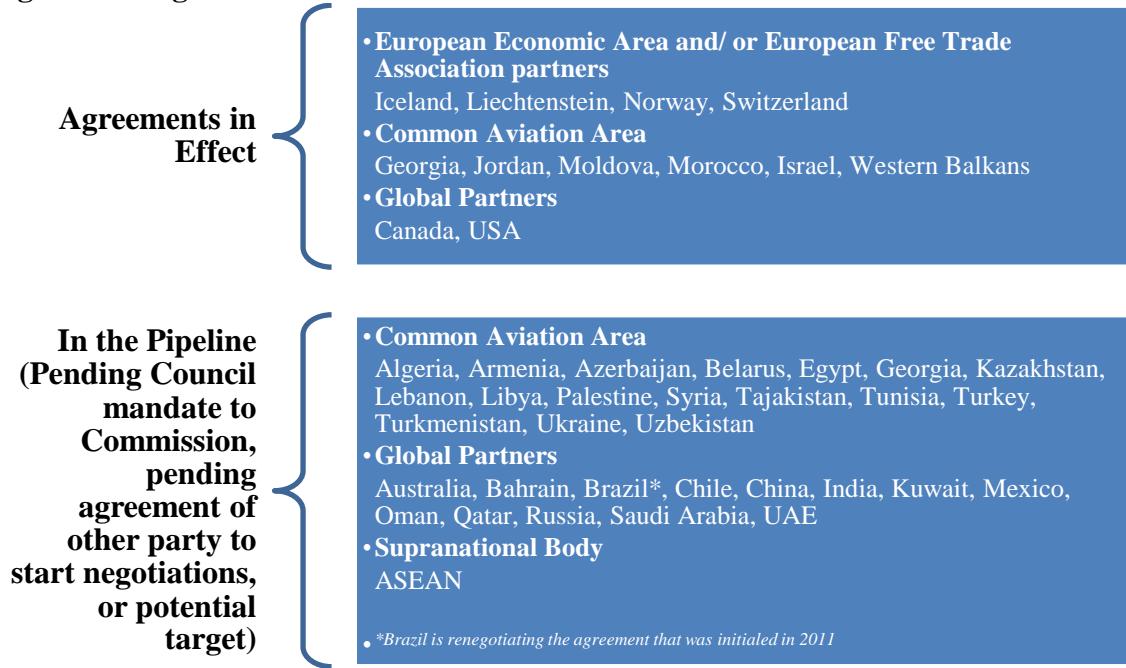
4.2 Background on EU progress with neighbors and partners

The previous chapter (Chapter 3) discussed the three pillars of the EU external aviation policy; which are: (i) “Horizontal Agreements”, (ii) a “Common Aviation Area” with EU neighboring countries, and “comprehensive air transport agreements” with strategic global partners. The ultimate objective for the Commission is to have open skies agreements or comprehensive air transport agreements with at least 52 non-EU states. So

⁶² See more at “Council conclusions on The EU’s External Aviation Policy - Addressing Future Challenges”, adopted item Number 28, at “3213th Transport, Telecommunications and Energy Council meeting” held in Brussels on 20 December 2012. Retrieved from [“http://www.cy2012.eu/index.php/el/file/xw+6wOcDPZr2nxXo9+AUZw”](http://www.cy2012.eu/index.php/el/file/xw+6wOcDPZr2nxXo9+AUZw)

far, the Commission was able to seal such agreements with 17 states (only 6 of which are non-European). More details on the Commission's roadmap is set out in the below Figure 2.

Figure 2: Progress of EU External Aviation Relations with Third States



Source: European Commission

To date and besides the “European Economic Area” and/ or “European Free Trade Association” partners, the following 11 neighboring countries have signed air transport agreements with the EU: Albania, Bosnia-Herzegovina, Macedonia, Montenegro, Serbia, Kosovo, Georgia, Moldova, Morocco, Jordan, and Israel. Furthermore, agreements have been signed with the following international partners: USA, Canada, and Brazil (Christidis, 2016); however, the agreement with Brazil is being renegotiated.

The EU recognizes mutually beneficial outcomes of liberalizing EU-third country aviation markets. In financial terms, Christidis notes that the more open market will provide a host of new business and investment potentials. If we consider the financial benefits liberalization has brought to the internal aviation market then it becomes clear that liberalizing the external market will stimulate demand for international air travel, create new markets, and provide consumers with ample choice of carriers, which should improve prices and conditions for the consumer. Simultaneously, liberalization of the external aviation market is likely to promote competitive equality internationally via agreement on regulations concerning state aid for airlines, market competition rules, and standards (Christidis, 2016).

Figure 3: Number of Passenger Growth Between EU and Selected non-EU States

Traffic Outside EU-28	Number of Passengers		Growth Figures			Market Share	
	Year 2007	Year 2017	Growth by Passenger Numbers	Growth by Percent	Share of Growth	Market Share in 2007	Market Share in 2017
Extra-EU (Outside EU-28)	270,808,227	334,245,693	63,437,466	23.43%			
UAE	8,409,425	20,527,127	12,117,702	144.10%	19.10%	3.11%	6.14%
Switzerland	24,594,698	32,233,828	7,639,130	31.06%	12.04%	9.08%	9.64%
Turkey	23,766,832	30,154,631	6,387,799	26.88%	10.07%	8.78%	9.02%
Russia	10,593,497	16,773,259	6,179,762	58.34%	9.74%	3.91%	5.02%
USA	52,131,357	56,796,678	4,665,321	8.95%	7.35%	19.25%	16.99%
Morocco	8,042,579	12,089,869	4,047,290	50.32%	6.38%	2.97%	3.62%
Norway	13,775,744	17,676,335	3,900,591	28.31%	6.15%	5.09%	5.29%
China (incl. Hong Kong)	5,348,032	8,951,956	3,603,924	67.39%	5.68%	1.97%	2.68%
Qatar	1,976,266	5,420,477	3,444,211	174.28%	5.43%	0.73%	1.62%
Algeria	2,872,152	5,760,982	2,888,830	100.58%	4.55%	1.06%	1.72%
Canada	9,336,129	11,237,253	1,901,124	20.36%	3.00%	3.45%	3.36%
Ukraine	2,626,938	4,173,611	1,546,673	58.88%	2.44%	0.97%	1.25%
Brazil	4,506,233	5,330,205	823,972	18.29%	1.30%	1.66%	1.59%
Saudi Arabia	755,218	1,487,944	732,726	97.02%	1.16%	0.28%	0.45%
Lebanon	1,088,701	1,615,153	526,452	48.36%	0.83%	0.40%	0.48%
Jordan	804,546	848,153	43,607	5.42%	0.07%	0.30%	0.25%
India	6,157,890	6,080,918	-76,972	-1.25%	-0.12%	2.27%	1.82%
ASEAN	10,431,402	9,572,251	-859,151	-8.24%	-1.35%	3.85%	2.86%
Tunisia	8,747,045	4,086,920	-4,660,125	-53.28%	-7.35%	3.23%	1.22%
Egypt	11,527,805	5,831,891	-5,695,914	-49.41%	-8.98%	4.26%	1.74%

Source: Eurostat

Figure 4: Number of Commercial Flights Growth Between EU and Selected non-EU States

Commercial Flights Outside EU-28	Number of Commercial Flights		Growth Figures	
	Year 2007	Year 2017	Growth by Number of Flights	Growth by Percent
Commercial Flights Outside EU-28				
UAE	38,703	64,970	26,267	67.87%
Morocco	79,114	92,361	13,247	16.74%
Lebanon	10,802	11,690	888	8.22%
USA	254,948	255,037	89	0.03%
Extra-EU (Total flights outside EU-28)	2,033,925	2,031,734	-2,191	-0.11%
ASEAN	36,746	32,170	-4,576	-12.45%
Russia	121,954	136,577	14,623	11.99%

Source: Eurostat

While reviewing Figure 3, it is noteworthy that three out of four states that witnessed growth by more than 5 million passengers with the EU between 2007 and 2017 are states that do not have an open skies agreement with the EU (UAE, Turkey, and Russia). The highest growth by passenger numbers came from the UAE (12.1 million additional passengers). The EU-US market grew by 4.6 million passengers, EU-Morocco by 4 million passengers, EU-Canada by 1.9 million passengers, EU-Lebanon by 0.5 million passengers, EU-Jordan by 0.04 million passengers.

Whereas, EU-ASEAN passenger traffic decreased by 0.85 million passengers and the figure for Tunisia also decreased by 4.6 million passengers in 2017 when compared with 2007. In Figure 4, we notice that the largest increase in commercial flights with the EU between 2007 and 2017 came from the UAE, Morocco and Russia. However, in the same time, ASEAN region flights decreased by 12.45 percent, and external EU flights decreased by a small but still noteworthy 0.11 percent. Christidis notes that the willingness of the EU's potential partners in liberalizing their market in the supply and demand of the air transport market is a major factor that determines the advancement of negotiations between both parties (2016).

4.3 The Case of Morocco

In 2001, Morocco adopted "the 2010 Vision"⁶³ to enhance tourism. The vision aimed to increase the number of tourists, hotel capacity, investments, revenues, jobs, and contribution of tourism to the local GDP. Morocco's Vision 2010 aspired for the liberalization of the air transport sector (Boniface and Cooper, 2009). The 'Blue Sky' initiative aimed to boost the flights serving the Moroccan market in addition to

⁶³ See more at <http://www.moroccoembassybangkok.org/website%20ambassade,tourism.htm.pdf>

increasing hotel capacity to boost tourism. In its rationale, “Communication”⁶⁴ in EU language, for “A Community aviation policy towards its neighbours”, the European Commission recommended to the Council that it be authorized “to start negotiations on a Euro-Mediterranean Aviation Agreement between the European Community and the Kingdom of Morocco”⁶⁵. The communication stressed that Morocco, at that time, “offers the best chances for fruitful negotiations on a comprehensive Aviation Agreement”, noting that at that time, 70 percent of Morocco’s exports and 65 percent of its imports stemmed from the EU⁶⁶. It did not take long until an agreement was signed by Jacques Barrot, “the European Commission’s Vice-President with special responsibility for transport”, and Karim Ghellab, Morocco’s Minister of Transport, on 12 December 2006 (Bernardo and Fageda, 2017). Barrot notes at the signing that "We now have an innovative text which is far superior to the conventional open-skies agreements. This agreement will bring the respective countries closer together, and shows us what can be achieved in the context of the Euro-Mediterranean partnership"⁶⁷. As mentioned in Figure 3, Morocco's air passenger traffic with the EU has increased by 50.32 percent between 2007 and 2017, from 8.04 to 12.08 million passengers. By the end of 2017, Morocco's market share in the external EU traffic was 3.62 percent up from 2.97 percent in 2007. Passenger traffic with the EU still resemble a significant 68.54 percent of Morocco’s total air transport market in 2017⁶⁸.

⁶⁴ A “communication” sets out the EC action plan, which could include legislative proposals.

⁶⁵ Released by the European Commission on 9 February 2004 in Brussels. See more at “<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0074&from=EN>”

⁶⁶ *Ibid.*

⁶⁷ See more at “http://europa.eu/rapid/press-release_IP-06-1770_en.htm”

⁶⁸ See more at Morocco’s Office National Des Aéroports (ONDA) “<http://www.onda.ma/>”

The vision of Morocco's government helped in sealing a comprehensive open skies air transport agreement with the EU. The agreement created room for low-cost airlines to enter the Moroccan market and offer cheap fares aimed at tourists⁶⁹. As already mentioned by Christidis, national political and economic priorities determine the outcome of negotiations. Opening up the market was a major step to boost the number of travelers between the EU and Morocco. This initiative, however, negatively impacted the national air carrier (Royal Air Maroc) as low-cost airlines (LCCs) such as Ryanair and Air Arabia Maroc started to increase their market share. In 2008, low-cost airlines had a 20 percent market share of all seat capacity in the Moroccan market, yet in 2018, the market share nearly doubled increasing to 38 percent in the Moroccan market⁷⁰. Christidis highlights that "In the case of Morocco, the strategic decision to make the country more attractive to tourism and business out-weighted the potential negative impacts that removing protectionism would have for local airlines" (2016). He adds that the EU-Morocco agreement is a precedent in the history of the EU outside Europe, in which the latter agrees with a non-European state on full-scale liberalization on traffic and economic rights of civil aviation operations in the context of regulatory convergence.

Keith Mason and William Morrison analyzed the increase in traffic between the EU and Morocco between 2005 and 2010 and they note that despite the increase in traffic by 67 percent, Morocco's national airline, Royal Air Maroc, "suffered a drop in its market share from 71% to 55%" (2016). They conclude that the open skies agreement

⁶⁹ See more "Oxford Economics. (2008). *Aviation: The Real World Wide Web* (Rep.). Oxford: Oxford Economics".

⁷⁰ Source: OAG Schedules Analyser data.

with Morocco has weakened Royal Air Maroc, the historically dominant national air carrier.

4.4 The Case of Lebanon

The European Commission also urged the Council in 2004 to be authorized to conduct negotiations for Euro-Mediterranean Aviation Agreements with each of Lebanon and Jordan, noting that “Lebanon currently offers good chances for fruitful negotiations on a comprehensive Aviation Agreement”⁷¹. Although, at that time, the EU constituted Lebanon’s main trading partner, the latter did not rely on the EU as heavily as Morocco does. Around 20 percent of Lebanon’s exports and 44 percent of its imports originated from the EU⁷², making the EU a significant but not a hegemonic partner.

A case study submitted by ICAO’s Secretariat General on Lebanon’s Open Skies policy highlights that in the late nineties, Lebanon’s Government began to consider the removal of restrictions for foreign airlines, which were introduced to protect “Middle East Airlines” (MEA). The government’s plan was to gradually liberalize the foreign airlines’ operations. Lebanon’s new cabinet, formed in November 2000, declared several economic reforms, including the implementation of an “open skies” policy. The case study highlights that “this unilateral liberalization policy immediately lifted restrictions on aircraft capacity and frequencies relating to [aforementioned] Third, Fourth and Fifth Freedom traffic rights with an objective of increasing air passenger and cargo traffic and of boosting the country’s ailing economy”⁷³.

⁷¹ See more at “<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0074&from=EN>”

⁷² *Ibid.*

⁷³ *Lebanon’s Open Skies Policy (Case Study).* (2007, July). Retrieved April 20, 2018, from ICAO Secretariat website: “https://www.icao.int/sustainability/CaseStudies/StatesReplies/Lebanon_EN.pdf”

The Council of the European Union authorized on 9 October 2008 the European Commission (EC) to negotiate with Lebanon a “Euro-Mediterranean Aviation Agreement”, as a part of the EC process to enlarge its “Common Aviation Area” with its eastern and southern neighbors⁷⁴. The objectives of this aspired agreement are to liberalize the aviation market between the EU and Lebanon, and to proceed with regulatory convergence in the main aviation areas. After more than 10 years, no agreement has been reached between both parts; yet, negotiations are still ongoing. So far, the main air transport achievement for the EU with Lebanon was the signing of the “horizontal agreement” in July 2006, which brings all existing bilateral air service agreements between individual EU member states and Lebanon in line with EU law, following the 2002 ECJ ruling. In other words, it amends the nationality clause in the bilateral agreements, which allows any EU airline to operate flights between any EU member state and Lebanon if there are established traffic rights under the relevant bilateral agreement⁷⁵.

In assessing the Lebanese air transport market, the Commission notes that Lebanon’s flag carrier, MEA, has benefited from the open skies policy. MEA accrued more than four hundred million US Dollars in losses between 1994 and 2001; however, in the financial year of 2002, the airline reported “the first profit since the mid-1970s”⁷⁶. It is plausible to highlight that between the seventies and the late eighties Lebanon witnessed intense turmoil with the ongoing war wars. With the end of the long war in

⁷⁴ See more on decision of the Council at “<https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A42012D0750>”

⁷⁵ See more at “https://ec.europa.eu/transport/modes/air/international_aviation/country_index/lebanon_en”

⁷⁶ See more at “<https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52004DC0074&from=EN>”

1989, Lebanon entered in a new era of post-war reconstruction and recovery.

Nevertheless, the Commission did not highlight how it did derive the positive effects of Lebanon's Open Skies on the profitability of MEA.

Despite the modest size of the market between the EU and Lebanon, the slow progress made towards reaching a comprehensive agreement raises questions about the willingness of the parties to conclude an agreement. There are several issues to examine in order to explore the horizons of the agreement that is under negotiations for more than ten years. First, is Lebanon's unilateral Open Skies policy enough to the size of the Lebanese market? Second, is regulatory convergence a major hurdle at the negotiations table? Third, how would the proposed comprehensive agreement reshape the market and who will gain or lose the most? Fourth, a comprehensive agreement will guarantee the free flow of air traffic and aviation capital; however, the free movement of people is still restricted with security concerns from EU passport holders and lengthy visa procedures for Lebanese passport holders. Finally, are the long-established airlines on both sides, which dominate the routes to and from Beirut (MEA, Air France, Lufthansa, Alitalia, Swiss and British Airways), satisfied with the status quo without stiff competition from low-cost carriers?

4.5 The Case of The USA

The previous chapter highlighted that since the early nineties, the EC called for a mandate from the Council to seal an air transport agreement with the US. However, the study also referred to a “divide-and-rule strategy” pursued by the US (Héritier and Karagiannis, 2011), which resulted in the signing of individual Open Skies agreements with each of Denmark, Sweden, Finland, Belgium, Luxembourg, Austria, Germany; in

addition to Bermuda II agreement signed between the UK The ECJ judgement of 2002 has changed the course of aviation relations between the EU and the US as will highlighted in this section.

When the aviation agreement between the EU and Morocco was signed, negotiations between the EU and the US were already undergoing to agree over an air transport agreement that would link the world's most two powerful aviation markets by number of passengers. Dobson argues that the EU aviation industry was over regulated and heavily relying on subsidized state-owned airlines with quotas on international markets. Europe and the US were following different paths until "political and economic dynamics conspired together in the eighties and early nineties to produce a remarkable change in the European Community [EC] and, by 1997, there were the makings of a competitive and lightly regulated single market, which brought it close to U.S. practice" (2009).

In 2003 there was a radical change in the EU, which proposed an "Open Aviation Area" (OAA) with the US. An OAA would unite the EU and the US in a common single market by merging European and US cabotage⁷⁷, permitting mutual "ownership and control" of airlines and harmonizing competition and safety regulations. Dobson writes that the EU aimed for an OAA with the US that could be later extended to other markets to eventually form a worldwide single market (2009). However, unexpectedly, the US hesitated and then baulked such radical plans, "though it seemed to embody the prospect of the kinds of market gains they had long urged others to pursue" (Dobson, 2009).

⁷⁷ Cabotage rights permits carrying traffic between two points in a foreign State; or to operate only in a foreign state.

While the “EU-US Open Skies Agreement” (OSA), which came into effect in 2008, brought expectations that passenger traffic between both markets would increase anywhere between 4 and 11 million passengers, these expectations were dampened by the global financial crisis of 2008-2009, which resulted in shrinking the market by 7.9 percent when comparing 2009 traffic with that in 2007 (Grančay, 2013).

Button concludes in his study that: “The challenge now is to develop a mutually acceptable framework that allows both parties to move from a simple, product based, Open Skies to one that embodies the mobility of factors of production as well within a full open market” (2009). To understand the reasons that have hindered, or which may continue to obstruct the conclusion of a truly liberal OAA, it is necessary to review the initial objectives of both parties and the current state of affairs. The US main objective was to receive an open access to London’s Heathrow airport. This was also evident in Bermuda talks, by which the US pursued a “divide-and-conquer” strategy. “The United States employed the lure of the supply of modern aircraft and the threat of economic pressure to get other states to sign liberal agreements” as described by Nayar (1995)⁷⁸. On the other hand, the Commission, backed by the ECJ, brought up legal actions against the EU states that pursued individual Open Skies agreements with the US. At the EU level, the Commission’s main objective was to bring its states’ bilateral agreements with the US in line with EU law. The Commission also aimed for a truly OAA with the US that is negotiated with the EU as one entity.

⁷⁸ See more on the US strategy to bypass Heathrow airport and to pressure the UK to sign a liberal agreement in Nayar’s “Regimes, Power, and International Aviation” (1995).

Héritier and Karagiannis highlight that the existing sole European negotiator on behalf of several member governments with conflicting interests has resulted in achieving an agreement with mixed results (2011). They add that the “outcome of the negotiation of the OSA 2007 is clearly biased in favour of the US” as the latter enjoys the right of ‘cabotage’ within Europe, while European airlines cannot have ‘cabotage’ rights in the US market. On the other hand, the US authorities would not relax their existing ownership and control rules to benefit European carriers. On the backdrop of OSA 2007 outcomes, the Commission launched another round of negotiations (stage two negotiations) with the US, which did not produce any further favorable outcomes for the Europeans (Christidis, 2016).

“The ultimate objective of the European Union is to create a transatlantic Open Aviation Area, a single air transport market with free flows of investment and no restrictions on air services, this situation has not yet been reached” (Christidis, 2016). The current status quo, the available anti-trust immunities for airlines groups on transatlantic routes, the concern over domestic politics and reactions of labor unions and investors in national airlines could be the major reasons standing in the path of an OAA. It is worth noting here that the chances of reaching an OAA agreement between the EU and the US would be enhanced when the two sides embed this agreement within the Transatlantic Trade and Investment Partnership (TTIP). Nevertheless, British exit from the EU (Brexit) will certainly reshape the path of aviation between both regions. Mr. Abdul Wahab Teffaha, the Secretary General of the Arab Air Carriers’ Organization (AACO) since 1996 and who advocates the interests of Arab airlines, says that he does

not know how Brexit will reshape the aviation landscape, but “I am sure it is going to be a mess”⁷⁹.

4.6 The Case of The UAE

A very interesting case to examine is the aviation relations between the EU and the UAE. Rachid Tiroual stresses that transport and tourism are fundamental sectors steering the UAE economy and aviation has emerged as a “vital contributor to the UAE’s economy” (2017). One of the UAE emirates, Dubai, home to Emirates Airline and Flydubai, expects that the aviation industry will contribute 32 percent to its GDP by 2020⁸⁰. Dubai International Airport (DXB) handled 4.34 million passengers in 1990. By 2010, the number of passengers at DXB airport increased by more than 10 times to reach 47.26 passengers. In 2017, the number of DXB passengers reached 88.24 million⁸¹; making Dubai International Airport the largest airport by the number of international passengers as of 2014.

Despite receiving the three-year mandate in June 2016 to start negotiations with the UAE, the Commission has not yet officially started negotiations with the UAE due to the latter’s refusal to engage in EU open skies talks. The reason behind this refusal as highlighted by Mr. Teffaha is that the EC mandate for the UAE is “based on a list of requirements, which I do not believe that the UAE will be able to cater for”⁸². Moreover, the UAE has individual open skies agreements with most EU states. In addition, a

⁷⁹ Teffaha, A. (2018, November 23). Thesis Interview with Secretary General of Arab Air Carriers' Organization [Personal interview]

⁸⁰ Retrieved from the Embassy of the United Arab Emirates to Washington D.C. at [“https://perma.cc/ZBE8-GS8D”](https://perma.cc/ZBE8-GS8D)

⁸¹ See more at “<http://www.dubaiairports.ae>”

⁸² Teffaha, A. (2018, November 23). Thesis Interview with Secretary General of Arab Air Carriers' Organization [Personal interview]

horizontal air transport agreement was signed by the EU and the UAE on 30 November 2007 to permit EU carriers to serve any EU-UAE routes⁸³.

Professor John O'Connell highlights that "there has been a major shift in the global air transport market as the Middle East's carriers, and in particular Arabian Gulf based airlines, have altered the way traffic flows are being routed" (2011). He adds that the gulf carriers have capitalized on their "geographical centricity" that covers 4.5 billion people residing within an 8-hour flight of their hubs.

The progress of the UAE with the EU, as a single entity, questions the benefits that could be generated from a comprehensive agreement that covers both markets. The UAE already has individual Open Skies agreements with most of the EU states. Between 2007 and 2017, the UAE carried the highest number of additional passengers to the EU (an addition of 12.1 million passengers, Figure 3). The Commission has expressed its interest in negotiating an agreement with the UAE since 2013 and the sluggish progress in reaching a comprehensive agreement also questions the real aims of both parties and the challenges ahead.

On the EU side, there could be various conflicting interests between major EU powers. Nationalistic preferences, driven by airlines, airports, investors and labor unions, result in a political connotation over the future of EU-UAE aviation relationship. On the UAE side, there could be also differing opinions between Emirates Airline, backed by Dubai Emirate, and Etihad Airways, backed by Abu Dhabi Emirate, over the aims of such an open skies deal.

⁸³ See more at "https://ec.europa.eu/transport/modes/air/international_aviation/country_index/uae_en"

Moreover, the UAE may be satisfied with its individual open skies' agreements with EU states and that the Commission is bringing to the table of negotiations several challenging requirements. Mr. Teffaha thinks that "it is possible to have an agreement provided it will improve the current situation" as the UAE has 26 individual Open Skies' pacts. Establishing an EU-level open skies agreement may not seem as a necessity unless the UAE is "given something in return" (Teffaha, 23 November 2018).

4.7 Summary

Reviewing the top forty airport pairs by the number of passengers carried between the EU and non-EU cities in 2016 highlights the most important cities (countries) on both sides that accounted for more than 12.75 percent of the EU external air passenger traffic. Outside the EU, the US ranks in the first place with 10 city pairs out of the top 40 airport pairs e.g. London Heathrow-New York JFK. It is followed by Switzerland (still in Europe but not in the EU) and the UAE each at 7 pairs, then the third rank is for Norway, Canada, and Turkey each at 2 pairs. On the other hand, in the EU, the UK holds the number one spot in which 24 city pairs stem from its airports, mainly from London Heathrow airport, followed by France at 7 pairs, then Germany at 4 pairs⁸⁴. This also amplifies the importance of Heathrow as a major gateway in the EU. The role of British airports within the EU aviation system will probably be affected by Brexit.

If we review once more Figure 3, and take into consideration only the states that witnessed growth in passenger numbers between 2007 and 2017, the six selected EU partner states with effective open skies agreements (Switzerland, USA, Morocco,

⁸⁴ See more at the "Directorate-General for Mobility and Transport" (European Commission) "EU transport in figures - Statistical pocketbook 2018", retrieved on 10 October 2018 from "<https://publications.europa.eu/en/publication-detail/-/publication/52f721ed-c6b8-11e8-9424-01aa75ed71a1>"

Norway, Canada, and Jordan) were able to carry 22.19 million additional passengers in 2017 when compared to 2007. However, their market share in the EU external traffic only slightly decreased from 40.13 percent to 39.16 percent in the same period. On the other hand, the top six states by passenger numbers from the selected states with no effective open skies with the EU (UAE, Turkey, Russia, China and Hong Kong, Qatar, and Algeria) were able to carry 34.62 million additional passengers in 2017 when compared to 2007; they were also able to raise their market share in the EU external market from 19.56 percent in 2007 to 26.2 percent in 2017.

Although a comprehensive air transport agreement between the EU and Jordan was signed in 2010, the number of passengers almost remained the same when comparing 2007 figures with 2017, which recorded 848,153 passengers, an increase of 43,607 passengers in a decade's time. Although Christidis refers in his study to a different set of states (USA, Russia, Morocco and Turkey) than the ones studied in this thesis (USA, UAE, Morocco and Lebanon), the author notes that liberalization of an international air transport market may have many several shades, “ranging from a simple removal of capacity limitations to a fully open competitive market that applies common rules”, which requires commitment from both sides of the agreement. Otherwise, further liberalization will slow down or stall (2016). In the four markets studied by Christidis, only Morocco proved that liberalization accelerates traffic growth and distribution of airport connections; whereas, for the other three cases, growth followed market trends “influenced by general political and economic factors” (2016).

Chapter V

The Successes and Challenges of The EU External Aviation Policy

5.1 Successes and Challenges of the “EU External Aviation Policy”

This concluding chapter summarizes the positive impact of European integration in the realm of air transport, which also led to the inception of the EU external aviation policy in a global system that is based on the principle of state sovereignty. This chapter will further argue that the EU aviation policy is facing a myriad of internal and external regulatory complexities that constrain the Commission’s negotiations power, due to internal prerequisites mandated by EU member states to the Commission and external socio-economic and political challenges from potential signatory third states. The Commission is also obstructed by the challenge of successfully implementing such agreements in full. Moreover, this chapter will highlight the weakening of its air transport competitiveness against foreign actors.

The prevalent regime for the “economic regulation of international air transport” relies heavily on the principle that each state “owns” its airspace. The state possesses the absolute sovereignty over who flies in its airspace and determines the terms for doing so. Professor Paul Gregory Hooper highlights that the trading of traffic (market access) rights can be observed as “a form of mercantilism”, in which each state follows its “national interests” by institutionalizing regulatory instruments and terms in air services agreements with other states (2014).

Christidis argues that liberalizing aviation, as in any industry, “can stimulate important structural changes and lead to drastic changes in the patterns of operation of airlines and airports” (2016). This was witnessed in the liberalization course within the EU that brought a “highly competitive landscape in European aviation” (Christidis, 2016). Mr. Teffaha highlights that the EU experience in integrating its aviation market draws the main steps on the road toward ultimate air transport liberalization⁸⁵. Violeta Bulc, Transport Commissioner in the European Commission (2014 – Present), highlights that the agreements signed under the umbrella of the Commission have generated more than 60 million additional seats between the EU and its partners, more than 500 additional direct connections, and lower prices for passengers⁸⁶. Within the EU, the share of air transport witnessed the highest increase out of all transport modes, from 6.5 percent in 1995 to 10.5 percent in 2016. By contrast, tram and metro share increased from 1.4 percent to 1.6 percent in the same period; railway transport remained constant at 6.6 percent; whereas, passenger cars, powered two-wheelers, bus and coach, and sea transport market share decreased at various levels⁸⁷. As air transport gains more share of EU traffic, the EU is facing rising challenges.

At the regulatory front, the EU faces regulatory complexities internally and externally. At the internal level, there are persistent conflicting views between national

⁸⁵ Teffaha, A. (2018, November 23). Thesis Interview with Secretary General of Arab Air Carriers' Organization [Personal interview].

⁸⁶ Bulc, V. (2018, October 3). *Speech at the European Aviation Summit, Vienna*. Speech presented at European Aviation Summit, Vienna. Retrieved from [“https://ec.europa.eu/commission/commissioners/2014-2019/bulc/announcements/speech-european-aviation-summit-vienna_en”](https://ec.europa.eu/commission/commissioners/2014-2019/bulc/announcements/speech-european-aviation-summit-vienna_en)

⁸⁷ See more at the “Directorate-General for Mobility and Transport” (European Commission) “EU transport in figures - Statistical pocketbook 2018”, retrieved on 10 October 2018 from [“https://publications.europa.eu/en/publication-detail/-/publication/52f721ed-c6b8-11e8-9424-01aa75ed71a1”](https://publications.europa.eu/en/publication-detail/-/publication/52f721ed-c6b8-11e8-9424-01aa75ed71a1)

interests and the supranational approach. Another newly rising challenge is Brexit. It goes without saying that the UK air transport industry and the UK aviation market are important factors. At the external level, the EU challenges exist on at three planes. The first is the modification or full implementation of existing open skies or comprehensive agreements. The second challenge revolves around the refusal of third states to engage in a dialogue at a supranational level. Finally, the third challenge centers on the requirements for regulatory convergence, its outcomes and success rate in implementation.

Iva Savić and Ana Kapetanović highlight that “the EU imposes its rules and policies to the non-EU countries and strengthens its position and the Member States’ development in the global field” under the guise of integration and regional cooperation or stimulation of international trade (2011). Mr. Teffaha stresses that “it is not fair” for the EU to establish a Common Aviation Area with neighboring countries where the latter do not enjoy the same privileges or access rights such as EU enterprises (the so-called “free-rider” clause).

Several non-EU neighboring states, especially the ones that are less-developed and of lower income, share common interests and concerns with the EU states, which paves the way for the EU to conduct this kind of policy (Savić and Kapetanović, 2011). From this perspective, it could be argued that the EU tailored approach was successful in dividing its external policy into horizontal agreements, a common aviation area, and agreements with global partners. Additionally, differentiating between partners bolsters the Commission’s quests, especially with the neighboring states that rely heavily on the EU partly because they were in the past colonized by EU countries. As for the EU global

aviation partners, the Commission fights to seal pacts that may help the EU airlines with new market opportunities for growth or to protect the interests of EU carriers by “guaranteeing a level playing field”⁸⁸.

As part of an EU aviation strategy, Button highlights that the EU must provide a political countervailing power to combat external monopoly forces in case the EU will fail in creating free markets between the EU -as a block- and other countries (1997). This was translated on the ground by the ECJ judgement that awarded the Commission the authority to oversee the EU external aviation affairs with third states. Primarily, the Commission was tasked to handle the already existing US Open Skies agreements with several individual EU states. Despite that the EC ruling ran contrary to the wishes of several EU states, none of the latter could disobey the ECJ’s ruling as it stemmed from a supranational institution created by the EU states. This also highlights an unconventional power-sharing model that creates internal struggles in the EU.

The current institutional framework for the Commission to receive a mandate falls under the unanimity rule in the Council. A single opposition from a member state would be enough to turn down the Commission’s proposal for a new mandate from the Council. Mr. Teffaha notes that one of the drawbacks that the Commission faces is the “political connotation” in getting a negotiations mandate. This mandate requires that the Commission convinces each EU member state, and the relevant EU intergovernmental and supranational institutions, of the benefits of potential agreements. He adds that the Commission fails when short-term national interests are prioritized over longer term

⁸⁸ See more in “Communication from The Commission To The European Parliament, The Council, The European Economic and Social Committee and The Committee of The Regions: An Aviation Strategy for Europe” at “<https://ec.europa.eu/transparency/regdoc/rep/1/2015/EN/1-2015-598-EN-F1-1.PDF>”

interests. Mr. Teffaha highlights that the ‘targets’ of the mandate stipulated by the member states in the Council is sometimes unfair. He stresses that trying to impose the same values and requirements that are applicable in the EU is not always fair towards other negotiating states. What took more than 40 years to develop in the EU cannot happen in other states overnight, he noted (Teffaha, 23 November 2018).

The efforts required by the European Commission to receive new negotiations mandates cannot be underestimated and the success in receiving such mandates further accredits the supranational authority of the Commission. On the other hand, some non-EU states still do not recognize the community as a negotiating partner and prefer to deal with individual EU member states bilaterally.

Thomas Lawton discusses the regulatory complexities in the EU that are a result of conflicting national interests against the supranational force. He conducts his analysis by referring to airlines’ state aid issue in the EU. Lawton argues that state aid for airlines represents a controversial area for the EU’s national and supranational governing bodies, and since the airline sector is a politically sensitive industry, the EC has tended to take softer stances when compared to non-aviation sectors. He further adds that “the Commission’s interpretation of the Treaties, allowing multiple applications for state aid, provides governments with a means of directly challenging the EU’s ‘one time, last time’ principle” (1999).

Krasner views EU sovereignty rules as inconsistent with conventional ones, in which EU member states have established supranational bodies that impact the sovereign choices of EU states (2001). Lawton’s paper focuses on the dynamics between

the supranational and intergovernmental forces in the EU. Specifically, the analysis suggests that activism on the part of the Commission can partially transfer authority from individual states to strengthen the EU's control of the air transport sector. However, national EU governments frequently ignore EU rulings on the airline sector when they are considered not to be aligned with their own interests. "This may indicate that nation-states remain in control politically and only allow the EU to increase its competencies when and where it is most expedient" for them (Lawton, 1999).

A further theoretical reading of "transatlantic aviation institutions" emphasizes the internal conflicts in the EU due to the delegation of power to the supranational institution, the Commission. Héritier and Karagiannis observe that the Commission played a very active role, which did not only enhance its internal mandate "by manipulating the rules", but also allied with the ECJ to get involved in areas that were excluded from its competencies in the Treaty. The authors allege that this conflict engendered "negative lessons about principal–agent models of EU politics" (Héritier and Karagiannis, 2011). The principal–agent model views EU member states as the principal(s) and the EC as their agent working for their interests.

Professor Atle Midttun underscores that the "mutual understanding and dependency between national flag companies and national political and bureaucratic elites make fertile ground for lobbying". He notes that such alliances create an "extensive scope for institutional and transactional creativity" (1992). At the core of the international air transport system, the EU is adopting unilateral regulations that affect international aviation and "are liable to affect the global objective of creating uniformity" (Burghouwt et al., 2015).

To recapitulate, the first major challenge for the EU air transport industry is related to regulatory complexities. The second major challenge is related to the operational environment and infrastructure, which resemble a critical challenge at the negotiating table. Stasinopoulos highlights: “It is widely accepted that the two most important assets for any airline are its routes, and its landing and take-off slots. It is conceivable that liberalisation of market access will open up routes which airlines cannot utilise effectively if slots are not available for new entrants” (1993). In Christidis’ analysis of the evolution of international air transport networks and the level of concentration in airport traffic shares, he highlights that slot availability constitute a main factor that affects the extent and distribution of benefits; moreover, slot allocation policies “can effectively distort the supply side of the market and limit overall benefits” (2016).

Internally, the Commission’s liberalization initiatives have been welcomed by EU airlines albeit with some caveats. For example, established air carriers may suffer from this process of liberalization as it has increased the number of competitors while new, low-cost players in the field may benefit from this more open market. In essence, the landscape of the EU’s aviation sector has been altered, with a number of established carriers being subject to immense financial and regulatory pressures. This which has meant that some have been unable to survive, which remains the case at present (Žabokrtský, 2011). Burghouwt et al., in their discussion paper on EU air transport liberalization process, highlight that low-cost carriers will continue to grow in EU countries; EU national carriers “will be increasingly exposed to low-cost competition on short-haul markets and new hub carrier competition on long-haul markets”. Capacity

scarcity at large airports will be a rising obstacle to enter the European market at such airports. Equally important, competition in ground handling services at several large EU airports remains restricted. While most EU flag carriers were able to establish a hub-and-spoke⁸⁹ system at their national airports during the second half of the nineties, market conditions began to worsen for the flag carriers towards the end of the nineties and early 2000s. This was mainly due to the stagnation of economic growth, rising fuel prices, and the rapidly increasing low-cost carrier services (Burghouwt et al., 2015).

In the operational environment, the EU air transport competitiveness is weakening with the rise of new Asian and Gulf mega hubs and airlines, and “as the economic centre of gravity shifts eastwards” (Bulc, 3 October 2018). Christidis note that the “political, geographic, demographic and economic factors influence the airline network dynamics and lead to distinct patterns of expansion” (2016). Royalties paid by EU airlines to the Russians to cross the Siberian airspace for flights leaving to East Asia and Australia negatively impacts the competitiveness of EU airlines par Russian, East Asian, or Australian airlines. Strikes and delays also weakens the competitiveness of EU air transport enterprises. A study conducted by the Commission highlights that from the beginning of 2004 until the end of 2016 there were 379 days on which strikes impacted the European air traffic management systems and resulted in more than nine million minutes of additional delay⁹⁰. These delays are also in addition to other delays and

⁸⁹ A hub-and-spoke system describes a hub as a central airport that flights are routed through, and spokes as the routes that planes take out of the hub airport; such a system was beneficial to EU flag carriers in increasing their share in the intra-EU market. For example, Air France’s hub is at Paris Charles De Gaulle (CDG) airport and the spokes represent all other French airports, EU airports, and non-EU airports that attract passengers to pass through CDG to reach their destination.

⁹⁰ See more at “<https://ec.europa.eu/transport/sites/transport/files/2017-03-06-study-on-options-to-improve-atm-service-continuity-in-the-event-of-strikes.pdf>”

cancellations caused by congestion, weather and other labor union strikes from pilots, ground services and so on. Furthermore, a study conducted by Aviation Economics on behalf of Airlines for Europe [association] highlights that the total airport charges paid at the top ten airports in the EU increased by 85 percent in 2015 compared to 2005 and by 35 percent at the bottom ten airports over the same period⁹¹. In that same period, European airlines decreased their fares by a cumulative average of 20 percent.

5.2 Conclusion

Despite of his beliefs in “free flight”, Mr. Teffaha notes that ICAO and WTO roles will not be expanded in the realm of economic regulation of air transport “given the current geopolitical construct”. Wang and Heinonen underscore that: “economic institutions have a direct impact on the development of aeropolitics, whereas political institutions set the boundaries within which economic institutions operate” (2015). Mr. Teffaha highlights that states are not totally shackled by the stipulations of the 1919 and 1945 global air transport regime, which is reflected by the development of open skies policies and loosening traffic rights. However, he warns that “the danger of keeping the regime and trying to break the regime in bits and pieces is that states or politicians may go back to the previous way of doing things. This is why some people are not happy and want to go back to protectionism” (23 November 2018).

The principle contribution of this thesis has lied in presenting the integration of the EU aviation market and the inception of an “EU External Aviation Policy” in the prevalent international air transport regime. The single EU aviation market has succeeded in putting a limit to the US hegemonic approach towards EU states (Dobson,

⁹¹ See more at “<https://a4e.eu/wp-content/uploads/2015/02/AvEc-Airport-Charge-Analysis-v1.5.pdf>”

1998). While a single foreign policy puts more pressure against other non-EU states, the EU is facing serious challenges that will affect the prosperity and growth of the air transport market. It is also striking to note that passenger growth can occur at outstanding rates without having an EU-level agreement, which revisits the added value of such agreements. The limitations of this study are related to defining the present landscape in aviation relations without being able to suggest an alternative track that states could pursue to globalize the aviation industry.

National political and economic priorities determine the outcome of air transport negotiations. However, policy makers and theorists on sovereignty and international regimes must continue to explore the relationships between national airlines and prestige. They must also examine the EU process of integrating its market to define a similar path that would be feasible to pursue at a global level and create uniformity in the system, away from unilateralism and short-sighted nationalistic interests. Transportation is essential in each phase of a state's well-being; statesmen must overcome the domestic political constraints and try to overwrite what has been written in the 1944 to create uniformity in the international system.

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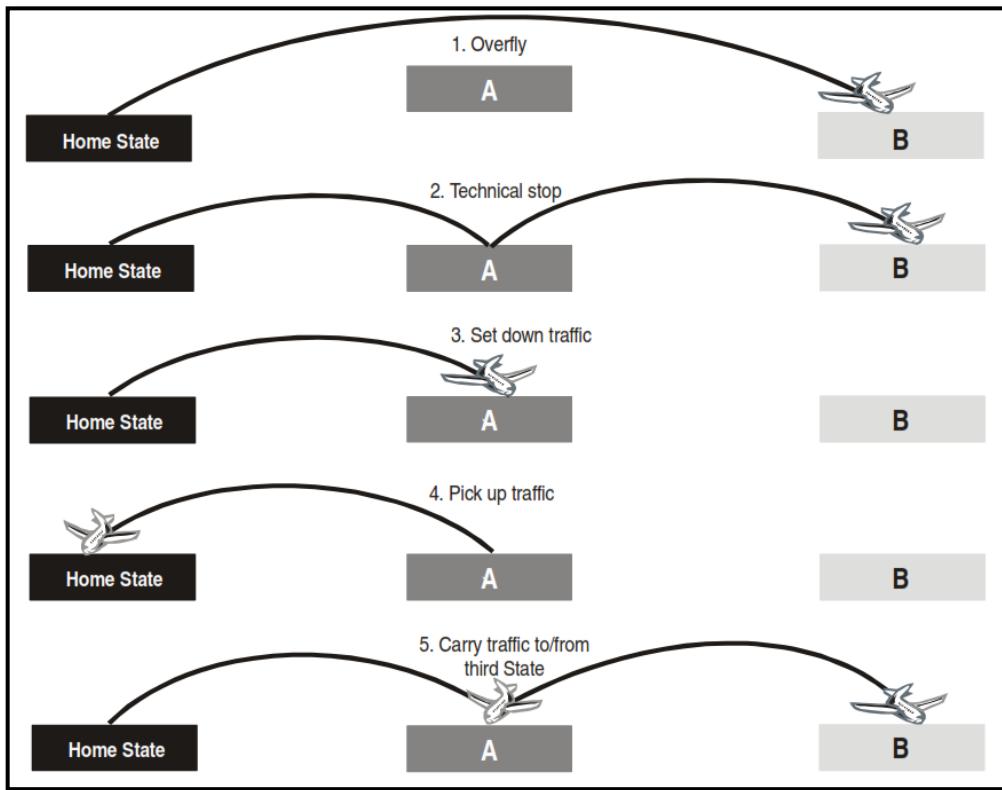
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Appendix

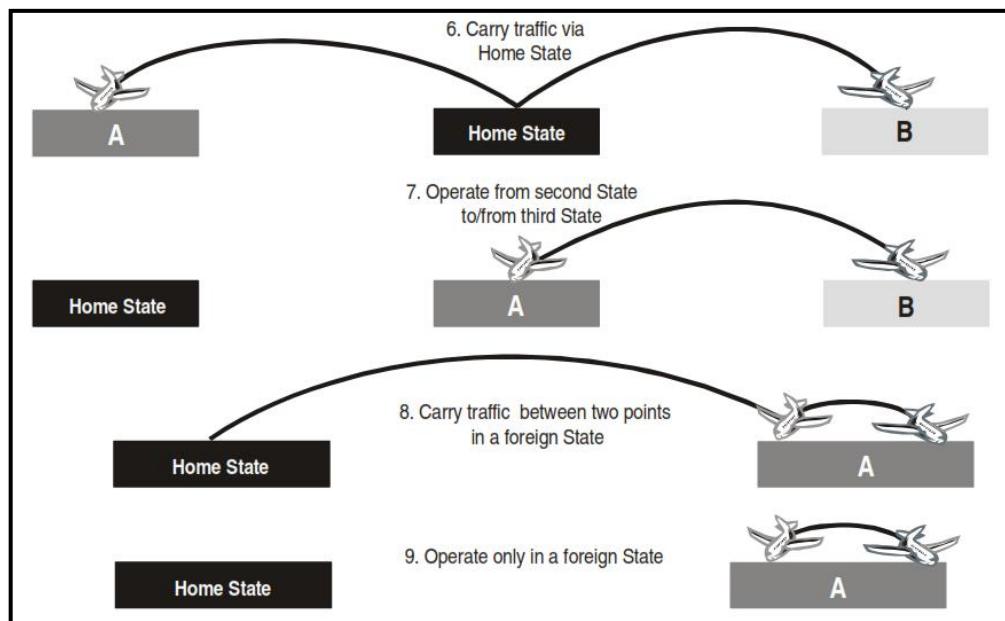
Appendix I: “Freedoms of the Air (The Nine Freedoms)”⁹²



1. **“First Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to fly across its territory without landing (also known as a **First Freedom Right**”).
2. **“Second Freedom of the Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State or States to land in its territory for non-traffic purposes (also known as a **Second Freedom Right**”).

⁹² Manual on the Regulation of International Air Transport (2nd ed., pp. 4.1-8-2.1-9, Publication No. Doc 9626). (2004). International Civil Aviation Organization. Retrieved from: https://www.icao.int/Meetings/atconf6/Documents/Doc_9626_en.pdf

3. “**Third Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down, in the territory of the first State, traffic coming from the home State of the carrier (also known as a **Third Freedom Right**)”.
4. “**Fourth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to take on, in the territory of the first State, traffic destined for the home State of the carrier (also known as a **Fourth Freedom Right**)”.
5. “**Fifth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State to put down and to take on, in the territory of the first State, traffic coming from or destined to a third State (also known as a **Fifth Freedom Right**)”.



6. “The **Sixth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting, via the home State of the carrier, traffic moving between two other States (also known as a **Sixth Freedom Right**)”.
7. “**Seventh Freedom of The Air** - the right or privilege, in respect of scheduled international air services, granted by one State to another State, of transporting traffic between the territory of the granting State and any third State with no requirement to include on such operation any point in the territory of the recipient State, i.e the service need not connect to or be an extension of any service to/from the home State of the carrier”.
8. “**Eighth Freedom of The Air** - the right or privilege, in respect of scheduled international air services, of transporting cabotage traffic between two points in the territory of the granting State on a service which originates or terminates in the home country of the foreign carrier or (in connection with the so-called Seventh Freedom of the Air) outside the territory of the granting State (also known as a **Eighth Freedom Right** or ‘**consecutive cabotage**’)”.
9. “**Ninth Freedom of The Air** - the right or privilege of transporting cabotage traffic of the granting State on a service performed entirely within the territory of the granting State (also known as a **Ninth Freedom Right** or ‘**stand alone’ cabotage**’)”.

Source: ICAO



Institutional Review Board (IRB)

لجنة الأخلاق

NOTICE OF IRB APPROVAL – EXEMPT STATUS

To: Mr. Hamza Mazloun
Advisor: Dr. Sami Baroudi
Professor
School of Arts & Sciences

APPROVAL ISSUED: 25 April 2018
EXPIRATION DATE: NA
REVIEW TYPE: EXEMPT

Date: April 25, 2018
RE: IRB #: LAU.SAS.SB1.25/Apr/2018
Protocol Title: Successes and Failures of EU External Aviation Policy

Your application for the above referenced research project has been approved by the Lebanese American University, Institutional Review Board (LAU IRB). This research project qualifies as exempt under the following category:

B. Research involving the use of educational tests (cognitive, diagnostic, aptitude, achievement), survey procedures, interview procedures or observation of public behavior, unless:

- (i) information obtained is recorded in such a manner that human subjects can be identified, directly or through identifiers linked to the subjects; and
- (ii) any disclosure of the human subjects' responses outside the research could reasonably place the subjects at risk of criminal or civil liability or be damaging to the subjects' financial standing, employability, or reputation.

This approval is limited to the activities described in the Protocol Exempt Application and all submitted documents listed on page 2 of this letter. Enclosed with this letter are the stamped approved documents that must be used.

APPROVAL CONDITIONS FOR ALL LAU APPROVED HUMAN RESEARCH PROTOCOLS - EXEMPT

LAU RESEARCH POLICIES: All individuals engaged in the research project must adhere to the approved protocol and all applicable LAU IRB Research Policies. PARTICIPANTS must NOT be involved in any research related activity prior to IRB approval date or after the expiration date.

EXEMPT CATEGORIES: Activities that are exempt from IRB review are not exempt from IRB ethical review and the necessity for ethical conduct.

MODIFICATIONS AND AMENDMENTS: Certain changes may change the review criteria and disqualify the research from exemption status; therefore, any proposed changes to the previously approved exempt study must be reviewed and approved by the IRB before implementation.

NOTIFICATION OF PROJECT COMPLETION: A notification of research project closure and a summary of findings must be sent to the IRB office upon completion. Study files must be retained for a period of 3 years from the date of notification of project completion.

IN THE EVENT OF NON-COMPLIANCE WITH ABOVE CONDITIONS, THE PRINCIPAL INVESTIGATOR SHOULD MEET WITH THE IRB ADMINISTRATORS IN ORDER TO RESOLVE SUCH CONDITIONS. IRB APPROVAL CANNOT BE GRANTED UNTIL NON-COMPLIANT ISSUES HAVE BEEN RESOLVED.

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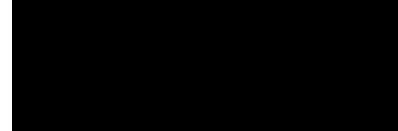


If you have any questions concerning this information, please contact the IRB office by email at
irb@lau.edu.lb

The IRB operates in compliance with the national regulations pertaining to research under the Lebanese Minister of Public Health's Decision No.141 dated 27/1/2016 under LAU IRB Authorization reference 2016/3708, the international guidelines for Good Clinical Practice, the US Office of Human Research Protection (45CFR46) and the Food and Drug Administration (21CFR56). LAU IRB U.S. Identifier as an international institution: FWA00014723 and IRB Registration # IRB00006954 LAUIRB#1



Dr. Costantine Daher



DOCUMENTS SUBMITTED:

LAU IRB Exempt Protocol Application	Received 20 April 2018
Proposal	Received 20 April 2018
Consent Form	Received 20 April 2018
Interview Questions	Received 20 April 2018
NIH Training – Hamza Mazloum	Cert.# 2632834 Dated (1 February 2018)

Interview Questions

Internal Note for IRB: Below is the list of all questions, noting that not all questions will be asked to all participants. Questions will be based on the area of expertise of the participant; for example, questions revolving around the air transport relations between Morocco and the EU will only be asked to the following candidates: Royal Air Maroc representative, European Commission representative, and Arab Air Carriers' Organization representative.

- What are your views on the current air transport regulatory regime governing relations between states?
- How did the international relations between states in the realm of air transport evolve throughout the past century? How do you anticipate its future?
- How do you perceive the European experience in integrating its air transport market?
- The EU External Aviation Policy (under a single voice) came into existence in 2002; how well did the EU progress with its neighbors and partners since then? Where did it fail and why?
- How would Brexit reshape the air transport market in the EU and what will be the implications on 3rd states?
- How do you perceive the EU's negotiating power to implement unilateral measures? In some areas they have succeeded (such as in safety and passenger rights) and in other areas they have failed (such as in the EU Emissions Trading Scheme or the EU Regulation 868/2004)? Despite their failure, would not such EU persistence push states to adopt or speed up the process of adopting multilateral agreements that cater for EU needs?
- If we can the reverse the clock before the signature of a comprehensive air transport agreement between Morocco and the EU, and while taking into consideration your experience in the aftermath of this agreement, what would you have changed in the terms of the agreement signed?
- If we can the reverse the clock before the signature of a comprehensive air transport agreement between the US and the EU, and while taking into consideration your experience in the aftermath of this agreement, what would you have changed in the terms of the agreement signed?
- Lebanon has been involved in negotiations with the EU on signing a comprehensive agreement; what is holding the signature of this agreement for many years? When do you anticipate it could be signed?
- What has been holding the signature of a comprehensive air transport agreement between the UAE and the EU? Where do both parties meet do they disagree?
- Will the EU carriers be granted access to serve the US domestic market and vice versa?
- Negotiations power



-
- Why did Damascus Convention fail in realizing an Open Skies regime amongst Arab states?
 - ICAO's role has been limited to providing a discussion panel amongst states in relation to the economic regulation of air transport. Will economic regulation transport remain based on a bilateral agreement and understanding, or will there be commitment from states towards a multilateral agreement that could enhance the role of ICAO or could enroll the WTO in managing economic issues of air transport in tandem of liberalizing the skies? Which terms and ideological concept of liberalization and economic regulation will be adopted?
 - Ownership and control of airlines is based on sovereign and nationalistic foundations; will air transport reach a state of being a truly liberalized sector that caters its globalized features?

