STRANGE BEDFELLOWS, OR A LOVE STORY IN TWO ACTS: ICAO & THE KYOTO PROTOCOL

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Introduction

The title is hip, don't you think? Coldplay has just done it with their latest album title *Viva La Vida, or Death and All His Friends*. But in juxtaposing bold theories about the album's content, the title simultaneously raises questions about the both the intent and effect of that content. All of which is what I hope to do here.

This is the story of an arranged marriage of sorts, bargained through the text of the *Kyoto Protocol*[1] to the *United Nations Framework Convention on Climate Change*[2], where responsibility for regulating and limiting emissions from aviation bunker fuels was discharged from Annex I State Parties to the Protocol[3], to the International Civil Aviation Organization, known as ICAO[4].

There are three main ways in which ICAO proposes to accomplish this regulation and reduction of aircraft emissions: through improved

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1 *Kyoto Protocol to the United Nations Framework Convention on Climate Change*, 10 December 1997, 37 I.L.M. 22 (1998) [*Kyoto*].

2 *United Nations Framework Convention on Climate Change*, 9 May 1982, 1771 U.N.T.S. 107, 165; 31 I.L.M. 849 (1992) [*UNFCCC*].

3 The *Kyoto Protocol* was drafted using the principle of common-but-differentiated responsibility, and as such, the Annex 1 Parties represent the States with developed industrial economies. Unsurprisingly, there is a strong correlation between Annex 1 listed countries and those countries that contribute significantly to the market for international aviation.

4 *Kyoto*, *supra* note 1: Article 2.2: The Parties included in Annex I shall pursue limitation or reduction of emissions of greenhouse gases...from aviation...bunker fuels, working through the International Civil Aviation Organization.

technological standards in engine design and renewable fuel sources; through operational efficiencies in routing and navigation that reduce air time and fuel usage; and through market-based incentive measures such as emissions trading. It is the third mechanism which is explored here, since it is a most curious and risky proposition for ICAO to undertake. Technological standards and navigational best practices are old hat for ICAO, but their authority and ability to effect international market regulation is untested and mired in uncertainty.

For this reason, ICAO and Kyoto are either a sweetly odd couple, with the inadequacies of one complimenting the strengths of the other, or else they are just a bad fit. In any case, by the end of this year there will be bit of a wife-swap, since Kyoto is set to expire and must either be renegotiated or renewed in Copenhagen in December, 2009. If there are problems with the relationship then, it would be helpful to address them now.

First of all, a straight reading of Kyoto seemingly gives jurisdiction over all of aviation emissions to ICAO. However, as their title suggests, ICAO is only capable of directly affecting international aviation—flights and flight operations within a given State's airspace are not subject to international regulation of any kind, and remain a matter of State sovereignty. And so, based on this distinction, individual State Parties to Kyoto will be responsible for the domestic portion of the global climate crisis along with all other emissions released from sources within their sovereign territory. It is only that portion of international aviation that contributes to climate change is to be taken care of by ICAO[5]. This division created the potential, for airlines operating in both domestic and international markets, to have to conform to competing emissions trading regimes. Furthermore, within a single market there is potential for airlines serving the same domestic routes to be subject to different regimes. At best, this

[5] See Abyd Karmali and Melinda Harris, "ICAO exploring development of a trading scheme for emissions from aviation" *ICAO Journal* 59:5 (August, 2004) 11, online: <http://www.icao.int/icao/en/jr/jr.cfm>. The authors of a feasibility study conducted at the request of ICAO highlight this as one of the primary challenges to implementing emissions trading schemes.

competitive distortion is impractical and discriminatory, and at worst it is totally unworkable.

As we will see here though, the distinction between domestic and international aviation is becoming both arbitrary and evasive in light of a globally fragmented approach to foreign investment and market access through Open Skies Agreements.

Arguably, as far as global industries go, civil aviation is among the most resiliently protectionist. However, piece by piece, the barriers to market access are being renegotiated in air services agreements known as Open Skies Agreements (OSAs), with surprisingly forward-thinking results in select cases. The problem arises though, when some foreign airlines are permitted to fly some domestic routes—a practice known as *cabotage*—there is no consensus on whether the emissions from those routes will be considered domestic or international. In fact, consideration of aircraft emissions specifically, and even environmental protection in general, has not been a part of these kinds of deals until very recently.

Another problem with the ICAO/Kyoto global emissions trading theory is that ICAO is a multilateral forum, and Open Skies is itself a term loosely applied to the thousands of entirely unique bilateral or regional agreements negotiated between States. ICAO, by informal practice, generally has a representative seat at the table for these negotiations, but has neither an ability to directly influence the terms of a resulting agreement, nor any enforcement authority at international law. The result for the emissions trading mechanism is that ICAO will face greater obstacles to international market regulation where those markets are staunchly national, and where market access is a matter for bilateral negotiations.

Finally, markets and economic policy represent a new role for ICAO. The bulk of regulation of commercial standards, prices, route allocation, and other financial matters is dealt with by the International Air Transport Authority (IATA). Unlike ICAO, which is a group of States getting together and talking about regulation, IATA is essentially a consortium of airlines and aviation operators,

and you can bet that these parties will have their own ideas about how emissions trading should work. According to a recent article, four of the largest international airlines and the British Airport Authority have joined together "to steer the debate on an emissions pact towards a deal they are happy with, rather than having one imposed on them."[6] While this potential conflict is mostly resolved through cooperation between IATA and ICAO,[7] there is the still the uncertainty of how global emissions trading will work in practice, and who will be the most appropriate regulator.

So, given the widespread but uneven proliferation of Open Skies-style market access, can the Kyoto/ICAO arrangement work for global aviation emissions trading?

In order to address this basic question, this paper will begin with a brief look at the divergent histories of the multilateral ICAO and the bilateral Open Skies Agreement forum. Following that, an analysis of some recent OSAs will discuss the potential for working within OSAs to address climate change through ICAO emissions reduction policies.

History & Evolution of ICAO

From its very beginning, ICAO has been a United Nations Specialized Agency under the umbrella of the Economic and Social Council (ECOSOC). Along with other UN Specialized Agencies – notably the International Maritime Organization, the World Health Organization, and the World Meteorological Organization, to name just a select few – ICAO was born in the aftermath of WWII during a treaty-making frenzy. Nearly all agreements negotiated around that time were for the purpose of establishing peaceful mechanisms of negotiation and dispute resolution, and above all else, avoiding

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[6] Reuters, "Top airlines want aviation emissions in climate pact" *The Economic Times* (12 February 2009) online: <http://economictimes.indiatimes.com>.

[7] IATA pledges their support for ICAO Emissions Policies: "Given the global nature of aviation and climate change, it is essential that emissions trading initiatives respect the global policies and guidance developed by ICAO." See IATA Document "What you need to know about emissions trading" *International Air Transport Authority*, online: < http://www.iata.org>.

another World War. Specifically with respect to ICAO, the intent was to establish a regulatory regime for the governance of airspace, which was an especially imperative task in light of the advances in military aviation technology which were set to be put to commercial use in the civil sector at that time.

The prior agreement of 1919[8] was replaced with the adoption by 52 States of the *Convention on International Civil Aviation*[9] at Chicago on December 7, 1944. Known informally as the *Chicago Convention*, today it has 190 Contracting States, making it a universal instrument in international law. The *Chicago Convention* established first the rules of the air according to the principle of state sovereignty, and then an organization to administer those rules and establish regulations and safeguards for the secure and peaceful management of the civil aviation sector. Within the organization, there was to be a plenary Assembly of representatives from all Contracting States, as well as a cabinet-style Council of representatives primarily from the State parties most involved in civil aviation, but also balanced out with an element of geographic representation as well.[10] Finally, the *Chicago Convention* established a permanent technical body of experts in the areas of aerial navigation and aviation technology known as the Air Navigation Commission.[11] This group would stay at the forefront of the industry and feed recommendations to, and conduct scientific and technical studies on behalf of, the Council.

In 2004, ICAO Council crafted Strategic Objectives to guide their decision-making and policy implementation for a five year period. Instead of the list of objectives in Article 44, the goals have been streamlined and prioritized.[12] They are: Safety, Security,

[8] *1919 Convention Relating to the Regulation of Aerial Navigation*, 13 October 1919, 11 L.N.T.S. 173.
[9] *Convention on International Civil Aviation*, 7 December 1944, 15 U.N.T.S. 295, as amended through 26 December 2007 (entered into force 4 April 1947) [*Chicago Convention*].
[10] *Ibid.*: Article 50(b).
[11] *Ibid.*: Articles 56 and 57.
[12] ICAO Council, "Strategic Objectives for ICAO Council 2005-2010" Adopted by Council 17 December 2004, reviewed January 2006, online: http://www.icao.int>.

Environmental Protection, Efficiency, Continuity and the Rule of Law.

As for the Environmental Protection objective, in 2007 when the ICAO Assembly considered the challenges of engine emissions, they agreed that "all stakeholders expect ICAO to demonstrate leadership in mitigating the negative effects of greenhouse gas (GHG) emissions by aviation".[13] Moreover, the Assembly asked Council, alongside the policy-makers at the UNFCCC, to "form a new Group on International Aviation and Climate Change...for the purpose of developing and recommending to the Council an aggressive Program of Action... based on consensus, and reflecting the shared vision and strong will of Contracting States...".[14] That this Program of Action is to be based on consensus speaks to the apparent notion amongst the Assembly membership that they will overcome the politics that have plagued Kyoto's implementation in other sectors.

History & Evolution of International Commercial Air Law

The basic premise of the *Chicago Convention* was to delineate and reaffirm the principle of State sovereignty of airspace over territorial lands and waters,[15] and to exclude all traffic rights from the multilateral system, subject to special arrangements made between States in bilateral or regional agreements. A supplementary agreement then allows for the first two of the freedoms to re-enter the multilateral system. The *International Air Services Transit Agreement,*[16] struck and agreed to by all 52 original State Parties, creates the obligation of safe passage of civil aircraft of a foreign State through domestic airspace, and also for those foreign civil aircraft to land for non-scheduled or non-commercial purposes. This successful and largely consensual bargain is known today as the "*Two Freedoms Agreement*" and together with the *Chicago Convention*

[13] ICAO Assembly Resolution A36-22, ICAO Doc9902 *Assembly Resolutions in Force (as of 28 September 2007)* Appendix J at 75, online: <http://www.icao.int>
[14] *Ibid.*: Appendix K at 76, emphasis added.
[15] *Ibid.*: Article 1, as interpreted following the *Convention on the Territorial Sea and Contiguous Zone*, 29 April 1958, U.N.T.S. 205, Article 1, affirmed in the 1982 *United Nations Convention on the Law of the Sea*, 1833 U.N.T.S. 397, Article 2.
[16] U.N.T.S. 389 (1951) [*Two Freedoms Agreement*].

forms the "Chicago System" which ICAO administers. Thus, as international air law scholar Marek Żylicz writes, the "first two are called technical or transit freedoms, while the others are known as commercial freedoms (or traffic rights in a narrower sense)."[17]

The Freedoms of the Air[18]

There was another bargain on the table in 1944, the *International Air Transport Agreement* [19] encompassing the first five of the freedoms, and of course thus known as the "*Five Freedoms Agreement*", but this supplementary treaty had little support (just 11 signatories), never came into force, and is effectively dead in terms of the multilateral jurisdiction of ICAO.

Despite the collapse of the multilateral *Five Freedoms Agreement*, many of the other freedoms, or 'traffic rights', have been promulgated extensively over the intervening decades through the negotiation and implementation of bilateral agreements between individual States. Whereas the Fifth Freedom was too controversial for universal treatment, many States have found reciprocity on the Fifth Freedom with select State partners.

Known colloquially as Open Skies Agreements, today there are thousands of these bilateral or regional treaties,[20] and although there are many similarities from one treaty to the next with respect to traffic rights, they are each unique to both the parties and to the period of time in which they were negotiated.

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[17] Marek Żylick, *International Air Transport Law* (London: Martinius Nijhoff, 1992), at 81, [*Żylick*].

[18] See Table A, immediately following this paper. Information in this table is compiled from http://www.icao.int/icao/en/trivia/freedoms_air.htm, and from Żylick, *ibid.* "Classification of Traffic Rights" at 80, as well through interpretations of the author.

[19] U.N.T.S. 387 (1953) [*Five Freedoms Agreement*].

[20] There are several OSAs with more than two State parties. For example the *Multilateral Agreement on the Liberalization of International Air Transportation,* Brunei Darusalaam, Chile, New Zealand, Singapore, United States of America, 1 May 2001 (accession by Peru, 21 December 2001) [*Kona Agreement*], online: <http://www.maliat.govt.nz. This paper treats bilateral and regional agreements equally.

It is also worth noting here that OSAs and similar arrangements operate at a tangent to the General Agreement on Trade in Services (GATS), which is under the auspices of the World Trade Organization. According to world trade scholar Richard B. Self, the GATS Annex on Air Transport Services "excludes all traffic rights (including the 'freedoms' identified under ICAO) and services 'directly related to the exercise of traffic rights.'"[21] Furthermore, the rationale for this exclusion was that there seemed to be a "general consensus that countries were not prepared to abandon the current system of bilateral reciprocity agreements governing trade in these services under the framework of [ICAO]".[22] It seems then, that the liberalization of civil aviation will continue to be piece-meal, globally inconsistent, and based on the particular interests of the States who choose to engage in bilateral negotiations with each other.

The best way to get a handle on the range of options available to States in negotiating OSAs is to engage in a comparative analysis of some of the more recent, and provocative agreements. For these purposes, an agreement can be 'provocative' in one of three ways: it can be based on a higher level of air Freedom; it can involve a State that enjoys a significant share of the global market in air transportation; or it can involve *both* a high level of rights *and* a high global market share.

For our part, Canada holds approximately 1.5-2% of the global market share in international air travel and shipping, while the United States commands a whopping 29-30% share.[23] The latest *Air Transport Agreement* between Canada and the US was entered into in 2007, and became effective immediately on signing.[24] By the traffic

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[21] Richard B. Self, "General Agreement on Trade in Services" in Terence P. Stewart, ed., *The World Trade Organization: Multilateral Trade Framework for the 21st Century and U.S. Implementing Legislation* (Washington D.C.: American Bar Association, Section of International Law and Practice, 1996), at 543.
[22] *Ibid.*: at 542.
[23] This data is the author's compilation of two data sets in: Organisation for Economic Co-operation and Development, *Regulatory Reform in the Civil Aviation Sector* (Paris, OECD: 2004), online: <http://www.oecd.org/dataoecd/36/36/32481191.pdf>.
[24] *Air Transport Agreement between the Government of CANADA and the Government of the UNITED STATES OF AMERICA*, 12 March 2007, Can.T.S. 2007/2.

rights agreed to, it is a Fifth Freedom agreement on select routes, with the ambition to continue liberalization "to a full open skies agreement that maximizes competition among airlines in the marketplace, including operations behind and beyond the territory of the Parties, with minimum government interference and regulations."[25] For the time being, however, it specifically excludes the right of consecutive *cabotage* as expressed in the Eighth Freedom.[26]

The United States signed its latest Open Skies Agreement with the European Union in 2007 at Washington D.C.[27] As of 2008, it is effective in allowing US and European Community airlines to operate routes between select cities on a Fifth Freedom basis. The "Grant of Rights" in Article 3.2(c) of that agreement allows service for "behind, intermediate and beyond points...in any combination and in any order" but subject to the limitation in 3.3(a) that the service by a US airline must originate or conclude in the US, and in (b) likewise for the Community airlines to originate or conclude in an EU Member State. What this means is unrestricted bidding by an increased number of carriers on the most popular (and therefore lucrative) routes connecting through the busiest hubs in the US and Europe: London's Heathrow, Amsterdam's Schiphol, New York's John F. Kennedy and Chicago's O'Hare airports.

At the top of the traffic rights hierarchy, today there are a few examples of Ninth Freedom agreements. Regional *cabotage* is where one state allows a designated air carrier from another state to "hub" out of one or more of its airports; that is, to allow a foreign-flagged carrier the right to operate routes within the home state or between the home state and a third foreign state. According to Żylicz, who was writing in 1992, the earliest examples of such arrangements occurred by enactment of the Single European Sky following creation of the European Union in 1992, and also in certain Arab and Latin American countries.[28] However, since that time there have been

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[25] *Ibid.*: Preamble.
[26] *Ibid.*: Article 2.2.
[27] *US-EU Air Transport Agreement*, 30 April 2007, 46 I.L.M. 470 (entered into force 30 March 2008).
[28] Żylicz, *supra* note 44 at 81.

sweeping changes in the structure of the airline industry, and whereas Żylicz was then hesitant to even conceive of regional *cabotage* as a proper Freedom, it is now present in a very real way in an agreement between the United Kingdom and Singapore.

The *UK-Singapore Air Services Agreement*[29] allows full market and route access for passenger, mail and cargo services. Because of the prior US-EU Open Skies and MALIAT[30] agreements, this agreement is the first to grant unfettered access to London-US routes by a non-US or EU airline (in this case Singapore Airlines, since it is the only designated airline).[31] Even more provocative, the Agreement allows Singapore Airlines "to operate like a domestic carrier in the UK and mount any number of services between UK cities" making it a full Eighth and Ninth Freedom agreement capable of *cabotage* within the UK market.[32]

Finally, Canada and the European Union have signed an agreement so recently, that the text of it is not available at the time of writing this paper.[33] Based on secondary source information, it establishes a framework of four phases to achieve better integration of regulation in both markets, beginning with an affirmation of existing traffic rights, and working toward—in the fourth phase—achieving full *cabotage* rights for both cargo and passenger services. However, the phases have no timeline attached to them, and Canada has a lot of preliminary work to do in liberalizing limitations on foreign investment in the airline sector[34] before even the second phase can be initiated.

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[29] 2 October 2007 (entered into force 30 March 2008). No I.L.M. number is available, but see *infra*, note 32.
[30] *Supra*, note 20.
[31] *Whitehall Pages*, UK Department for Transport. Published: 3 October 2007, online: <http://www.whitehallpages.net>.
[32] "Singapore, UK Conclude Landmark Open Skies Agreement" *ChannelNewsAsia.com* (3 October 2007), online: <http://www.channelnewsasia.com>.
[33] See Brent Jang, "Rules relaxed, but will it open up the skies?" *Globe and Mail Online* (10 December 2008), online: <http:www.reportonbusiness.com>.
[34] These restrictions are in the *Canada Transportation Act*, S.C. 1996, c. 10. and require Parliamentary action to reform.

Looking forward internationally, there are many of these Agreements waiting in the wings for the critical alignment of government regulatory and commercial conditions. Furthermore, the trend is toward greater regionalism, with groups of States bargaining collectively for air transit rights. Most notably, based on the potential for growth in a single region is the progression towards open skies among the ten ASEAN countries.[35] It is envisioned that the region will have a single aviation market by 2015, having concluded this year an Agreement to allow Third and Fourth Freedoms between the capital cities of all member countries, and with a commitment to enacting the Fifth Freedom by 2010.[36] Perhaps the greatest impact of the proposed ASEAN Single Aviation Market though, is that the bloc of ten members then effectively bargains together to enter bilateral agreements with other states. Preemptively, that vision is already in the works with talks progressing between the ASEAN Air Working Group and both China and India.[37]

The ICAO Emissions Mandate—Blurring the Line Between Domestic and International

The whole point of this lengthy analysis of liberalization is that once a foreign carrier is flying otherwise domestic routes on a *cabotage* or even a merely in-transit authority, it is unclear whether that aircraft is "international" or "domestic" for the purposes of air emissions.

Recall that ICAO has competence and authority only for international aviation. Although there may be a positive spillover effect from international regulation to domestic performance in some areas such as improved engine performance and aircraft design, the same cannot be said for market-based mechanisms such as emissions trading systems, which operate based on the availability of a local market in which to trade or offset carbon emissions. Thus, the Kyoto Protocol's

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[35] The Association of Southeast Asian Nations is made up of: Singapore, Malaysia, Thailand, Brunei, the Philippines, Indonesia, Vietnam, Laos, Cambodia, and Myanmar.

[36] "Asean Single Aviation Market" *Asian-Aerocad.com* (02 February 2008), online: <http://www.asian-aerocad.com>.

[37] *Ibid.*

Article 2.2 transfer of responsibility for aviation emissions was predicated on just such a distinction.

It is very similar in fact to a high school mathematics problem: if a Singapore Airlines A380 flies Manchester Airport to London-Heathrow to New York-JFK, how many per passenger kilograms of carbon enter the stratosphere if the aircraft flies at seventy-five percent capacity? And how many if it is at ninety percent? However, it is the high school social studies student (or the third year international environmental law student, for that matter) who is forced to ask: which country counts each portion of the flight under their aviation emissions reduction system, or does it all default to ICAO as international aviation? Should Singapore as the nation of registration of the aircraft be responsible, even though it is the UK and US markets they are serving? If the type of route flown, and whether or not it crosses State boundaries is determinative, then is the Manchester-Heathrow portion severable from Heathrow-JFK?

Assuming there are better solutions in certain markets these days, can these emissions be offset or traded in the currently-functioning European carbon market, or must they continue unabated until ICAO implements precise standards and systems to deal with those international emissions? If the latter is our answer, that might take a while, since if you recall we are waiting for consensus before proceeding with the aggressive Program of Action that has yet to be developed.

Since the domestic/international distinction in ICAO Law was developed in the protectionist era of aviation regulation, it is at best just a guess if this distinction will hold up to liberalization, or if it actually leaves gaps wide enough for the emissions agenda to slip right through. The root question that remains unanswered is whether the nationality of the airline, which was one of the very tenets upon which the Chicago System was established[38] should be the operative marker of the distinction, or whether it should be based on the State in which the route is flown, despite *cabotage* arrangements.

[38] *Chicago Convention*, *supra* note 9: Article 17.

It is for these reasons that Nigel D. White, an international scholar at the University of Sheffield School of Law, has cautioned against the haphazard overlapping of "organisational legal orders", such as ICAO Law, WTO Law, ILO Law, and arguably Kyoto Law. He warns:

> *One problem that remains unresolved is whether there are any norms that govern the relationship between these potentially overlapping legal orders or regimes, especially where there is an overlap in the membership of the relevant organisations.*[39]

Surprisingly, the *US-EU Open Skies Agreement* contemplates this overlap and confronts it in the most straightforward manner possible: by invoking ICAO's yet-to-be-determined environmental protection standards. Subtitled "Environment", Article 15 of that Agreement begins in Paragraph 1 with a rather blithe and inconsequential statement of intent, and then seems to go the opposite direction in Paragraph 2, where it actually obligates the Parties to mitigate any adverse effects that environmental measures may have on the exercise of traffic rights. However, in Paragraph 3 there is the most stunning example of overlap in the obligation that:

> *When environmental measures are established, the aviation environmental standards adopted by the International Civil Aviation Organization in Annexes to the Convention shall be followed except where differences have been filed...*

The EU has been the world leader on climate change policy-making and their involvement in air transport agreements will draw their policies to ride up against the politics of some of their negotiating partners. Although the text of the provisions in the Canada-EU Agreement of December 2008 is not yet available for analysis, there is some hope that the agreement could even ratchet-up the otherwise apathetic contribution Canada has made as a Kyoto Party. According to a press release from Brussels, "[b]oth sides agreed to closely cooperate in order to mitigate the effects of aviation on climate

[39] *The Law of International Organisations*, 2d ed. (Manchester, UK: Manchester University Press, 2005) at 186.

change".[40] It remains to be seen whether this will lead to binding emissions reduction action for Canada, or be explained away as diplo-speak.

Conclusion

In summary, this paper has identified and probed some major challenges to the implementation of a global emissions trading scheme for aviation by ICAO, as directed by the Kyoto Protocol.

There is considerable debate and plenty of scholarly writing on what Open Skies will mean for competition, for foreign investment in airlines, for prices to the consumer, *et cetera*. However the very recent rise of *cabotage* arrangements and totally unfettered market access by foreign air carriers has plagued what seemed like such a simple nationality-based distinction in the era of protectionism. The basis on which the bargain was struck, that the Kyoto Parties would take care of their own emissions, and ICAO would handle the default international portions, now seems lost amidst the haphazard frenzy of free market love that is Open Skies.

This lack of definition though, is not fatal. In establishing benchmark environmental standards to achieve the goals that Kyoto has set, ICAO needs only to define the terms "international aviation emissions" with sufficient precision in light of liberalization. This simple task could unlock domestic restrictions on market-based mechanisms, and liberalize the solution along with the problem.

Ultimately, in answer to the question of will it work? The answer is a qualified no; they are in fact "strange bedfellows". There are just too many irreconcilable differences in the Kyoto/ICAO matchup to enable an open emissions trading scheme for aircraft emissions on a global scale. But, the bargain was accomplished in just a couple of sentences early in the text of Kyoto. Perhaps if there is greater attention paid to the intricacies and realities of the commercial aviation industry when the deal is revisited in Copenhagen, these challenges can be overcome.

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[40] European Union, Press Release, IP/08/1914. "Breakthrough in EU-Canada negotiations on far-reaching aviation agreement" (9 December 2008).

Table A: The Nine Freedoms of the Air

First Freedom	The privilege to fly across the territory of a state without landing.	**Universal** Acceptance
Second Freedom	The privilege to land for non-traffic purposes (technical landing).	**Universal** Acceptance
Third Freedom	The privilege to put down passengers, mail and cargo taken on in the territory of the state whose nationality the aircraft possesses.	**Many** Bilateral Agreements
Fourth Freedom	The privilege to take on passengers, mail and cargo destined for the territory of the state whose nationality the aircraft possesses.	**Many** Bilateral Agreements
Fifth Freedom	The privilege to take on passengers, mail and cargo destined for the territory of any other (third) state and the privilege to put down passengers, mail and cargo coming from any such territory.	**Some** Bilateral Agreements
Sixth Freedom	The privilege of carrying passengers, mail and cargo between the territories of two foreign states via territory of the home state of the aircraft (or airline).	**Some** Bilateral Agreements
Seventh Freedom	The privilege of carrying passengers, mail and cargo between the territories of two foreign states without calling on the territory of the home state of the aircraft (airline)	**Some** Bilateral Agreements
Eighth Freedom	The privilege of ***cabotage***, or to carry passengers, mail and cargo from one point in the territory of a foreign state to another point in the same territory. Also known as "consecutive *cabotage*".	**Very Few** Bilateral Agreements
Ninth Freedom	The privilege of **regional *cabotage***, or to carry traffic between two foreign countries on a sector basically restricted by regional arrangements to be served by the carriers belonging to the same region. Also known as "stand-alone *cabotage*"	New – **Select** Bilateral Agreements