Ruwantissa Abeyratne

Administering the skies

Facing the challenges of market economics

www.aracneeditrice.it
info@aracneeditrice.it

via Raffaele Garofalo, 133/A–B
00173 Roma
(06) 93781065

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Preface

At the time of writing, the world was a maelstrom of contention and contradiction seeking to forge a cohesive and sustainable development policy amid the insurmountable dichotomy of progress on the one hand and environmental protection on the other. Progress was halted and environmental protection was misunderstood and multidirectional. The Eurozone was in crisis, with Greece threatening to pull out and Ireland and Spain with their arms outstretched, waiting for handouts. Portugal was fairing no better. Germany was still pulling for austerity and France, with its newly elected President, was favoring a growth–spurred Euro economy. The United States was seemingly in recovery mode, unemployment being at 8.1, down from 8.7 in November 2011 but still needing an impetus in growth and innovation with a gloomy projection of a static 2.5% growth in 2012. On the other hand, China, Taiwan, South Korea and some other major Asian countries such as Singapore and Malaysia were thriving with robust growth rates. India, which had continuously shown a staggering annual growth rate of 9.3% until the economic crisis in 2008, showed a rate of 5.3% in the first quarter of 2012, the decrease being largely due to a falling currency and a rise in inflation. The much vaunted BRICS nations (Brazil, Russia, India, China and South Africa) were already beginning to show signs of a decline in growth as a corollary to the Eurozone debt crisis.

In early June 2012, the International Air Transport Association (IATA) had revised its statement for 2012 to the effect that European airlines would lose a billion US dollars in addition to their losses already predicted for that year, purely due to the Eurozone debt crisis.

In the same month, at the IATA Annual General Meeting in Beijing, it was revealed that in 2011, aviation safely transported some 2.8 billion passengers and 48 million tons of cargo. It was also noted that the value of goods transported by air was estimated at $5.3 trillion, which equals to 35% of the value of all goods traded internationally. A recent

study by Oxford Economics has confirmed that aviation's contribution to the global economy supports 57 million jobs and some $2.2 trillion in economic activity. Oxford Economics projected that aviation will grow about 5% annually to 2030. That would see passenger numbers rise to 5.9 billion and cargo shipments could triple to nearly 150 million tonnes. This connectivity would support 82 million jobs and $6.9 trillion of global GDP. If growth is held back by even one percentage point, the global economy would forfeit 14 million jobs and over $1 trillion in GDP contribution from aviation. Aviation's benefits are not guaranteed. Aviation is expected to grow about 5% annually to 2030. If that growth is held back by even one percentage point, the global economy will forfeit over a trillion dollars and 14 million jobs.

Also at the time, environmentalists were preparing to attend, on 17 June 2012, a conference in Rio de Janeiro called Rio 20 (held 20 years after the first Rio conference on the environment called *The Earth Summit*). Rio 20 was to be on the theme "good business for a sustainable future". At around the same time the buzzwords in the commercial world for "good business" were Corporate Social Responsibility (CSR) and Corporate Foresight (CF). *The Economist* divided these three buzzwords into three sub components that collectively made up CSR. They were "sustainability", "innovation" and "sharing". As for sustainability, it was reported that the concept fitted well with lean production and tight supply chain management. Innovation was being coined with sustainability to introduce "sustainable and business innovative units" in the corporate environment. An example cited by *The Economist* was *Nike* which was making more clothes out of polyester from recycled bottles and an athletic shoe with its "upper" knitted from a single thread. "Sharing" was seen in instances where rival and competitive firms were getting together to achieve common sustainability in their products, an example cited being *Starbucks* which held a "coffee cup summit" in the Massachusetts Institute of Technology focusing on reducing the environmental impact of disposable coffee cups[1].

In terms of CSR, and for the most part, the aviation industry (which includes manufacturers and airlines) has not done too badly[2]. More

1. Schumpeter, Good Business; Nice Beaches, *The Economist*, May 19–25th 2012, at 76.
2. See Ruwantissa Abeyratne, *Aviation and the Carbon Trade*, Nova Science Publishers

and more airlines are becoming greener and aircraft manufacturers are diligently pursuing the production of aircraft that would leave as small a carbon footprint as possible. However, the approach to the global reduction of carbon dioxide emissions by aircraft engines remains fragmented with global economic development, the exponential demand for air transport, applicable principles of international law and policies on levies on carbon emissions being isolated from each other. The contentious issue of the European Union's aircraft emissions trading scheme (ETS) which requires aircraft operators to monitor and report data on their engine emissions regularly from 2010 onwards provides a good example. There are EU–wide provisions, adopted by the European Commission in April 2009, on what data must be monitored and reported, and how this should be done. These are laid down in the Monitoring and Reporting Guidelines (MRG). One of the requirements from the MRG is for aircraft operators to submit a monitoring plan by 31st August 2009. The Commission will publish templates for monitoring plans and for reporting. These templates may be adapted by EU Member States provided they contain at least the same data input as the templates published by the European Commission.

No later than 30th April of each year, aircraft operators are required to surrender emission allowances that are equivalent to the amount of emissions that they emitted (and reported to the competent authority) during the previous calendar year. Participants in the ETS scheme who emit more than the emission allowances they have received, can buy allowances from other participating aircraft operators or from operators of stationary installations that also fall within the scope of the EU ETS. Purchasing allowances will ensure that sufficient allowances are surrendered by the 30th of April each year. If participants emit less than the emission allowances allocated to them, the surplus of emission allowances can be sold.

Under the ETS, aircraft operators coming into or going out of European Community aerodromes are required to submit an annual emissions report to the competent authority. This report, which has to cover emissions pertaining to an entire journey irrespective of whether such journey commenced outside Europe or not, has to be

Inc: New York, 2011, 174–177.

verified by an independent and accredited verifier prior to submission. In the pre–trading period (2010–2011) airlines have to submit their first verified emissions report by 31 March 2011 and 2012. They are, however, not required to surrender emissions allowances equivalent to the operator's reported emissions for the years 2010 and 2011. The first trading period started from 1st January 2012 onwards. Starting from April 2013 aircraft operators will be required to surrender each year emission allowances that cover the verified reported data for the previous year.

Furthermore, before the start of each trading period aircraft operators are required to submit a revised monitoring plan for annual emissions. The first time such a review takes place is before 1 January 2013. In performing the review they would have to assess whether their monitoring methodology can be changed in order to improve the quality of the reported data without leading to unreasonably high costs. The revised monitoring plan for annual emissions needs to be approved by the competent authority of your administering Member State.

The initial snag with this scheme is that a vast number of States objected to it on the ground that the European ETS was extraterritorial[3] in application. The latest report at the time of writing was that India had threatened to ban European airlines from its airspace and that 10 Chinese and Indian airlines had refused to comply with the ETS requirements, while many nations, including the United States, Russia and several prominent South American States and African States have lodged their strong protest against the application of the ETS[4].

Marthinus van Schalkwyk, Minister of Tourism, South Africa, speaking at the 2012 Aviation & Environment Summit convened from 21–22 March 2012, in Geneva, referred to the ETS as an: "aggressive unilateralism" that could lead to retaliation through trade wars and distortion of competition". He requested EU to suspend the inclusion of aviation in this scheme for two years, encouraging multilateral dialogue and calling for a consensus under The International Civil

3. *Id*. 166–174. Also by the same author, The New Emissions Trading Scheme: Airlines — Is It Extraterritorial?. *Environmental Policy and Law*, Vol.38, No.3; 2008: p. 155–160

4. India Warns EU Over Airline Carbon Tax, *Air Letter*, Thursday 24 May 2012, at 3.

Aviation Organization (ICAO)[5] in order for the aviation industry to "clean up its act."

On 2 November 2011 the Council of ICAO adopted a declaration unanimously urging the EU not to subject non–EU carriers to its ETS. This Declaration was sponsored by India and 25 other member States of the Council. The entire aviation community, including the EU — which has stated that it is willing to amend its scheme if an ICAO sponsored alternative is finalized — supports the view that market based measures should be global in application and should be developed through ICAO.

This is easier said than done for several reasons. The first is that over the past 6 years, States have polarized themselves in the ICAO fora on this issue[6]. More compellingly, as this book will discuss, ICAO is constrained within certain parameters of its own Assembly Resolution A37–19[7], adopted at its 37th Session, which requires ICAO to develop a framework for market–based measures while attaining global aspirations in the reduction of emissions taking into consideration *inter alia* the maturity of aviation markets and the sustainable growth of the international aviation industry. This directive, which is seemingly sensible, is unfortunately at loggerheads with the exponential growth of the air transport market which has been, and is inevitably headed towards the failed economic concept of "predict and provide". In the face of this inevitable trend and its ultimate end, one wonders how viable the sole emphasis on aspirational goals aimed at reducing emissions will prove to be, and whether the answer would rather not

5. ICAO is the specialized agency of the United Nations handling issues of international civil aviation. ICAO was established by the Convention on International Civil Aviation, signed at Chicago on 7 December 1944 (Chicago Convention). One of the overarching objectives of ICAO, as contained in Article 43 of the Convention is to foster the planning and development of international air transport so as to meet the needs of the peoples for safe, regular, efficient and economical air transport. ICAO has 191 member States, who become members of ICAO by ratifying or otherwise issuing notice of adherence to the Chicago Convention. See ICAO Doc 7300/9 Ninth Edition 2008.

6. Ruwantissa I.R. Abeyratne, The Authority of the European Union to Unilaterally Impose an Emissions Trading Scheme,. *Air & Space Lawyer*, Vol.21, No.4; 2008: p. 5–9. Also by the same author, The European Emissions Trading Scheme: A Legal Discussion *Air & Space Law*, A Global Perspective, Montreal, Quebec, Canada; 18–19 September 2008: p. 1–16

7. Resolution A37–19: Consolidated statement of continuing ICAO policies and practices related to environmental protection — climate change, *Assembly Resolutions in Force* (as of 8 October 2010), ICAO doc. 9958, at 1–67 to 1–74.

lie in a deep focus on channeling resources towards technological advancement that would produce greener aircraft.

It is incontrovertible that in order to develop a viable framework for globally applicable market based measures one has to thoroughly consider firstly where the global economy is headed and secondly, in which direction the air transport market is going. To embark on such a scheme without these considerations would be nothing short of folly. The first part of this book will therefore be dedicated to an evaluation of the destiny of the world economy and the air transport product. The second part will apply the discussions of the first part to examine how a framework on MBMs could be developed within the framework of ICAO, given the Organization's aims and objectives and its particular characteristics within the United Nations system as a specialized agency. How Corporate Social Responsibility in the aviation industry would mesh these two parts would be the final consideration.

When I started writing this book the initial subtitle I gave it was *"The Folly of Fragmenting Air Transport"*. It is exactly what this book is all about. Over the past 68 years we have perpetuated a continuing path of "predicting and providing" in the interests of States and their airlines in the most inexplicably reactive manner. It is time to change this pattern by defragmenting polarized interests in air transport and promoting growth in the industry primarily through research and development. An example is in Europe where, on average, 12% of aeronautic revenues, representing almost €7 billion per year for civil aeronautics alone, are reinvested in Research and Development (R&D) and support around 20% of aerospace jobs. Every Euro invested in aeronautics R&D creates an equivalent additional value in the economy every year thereafter. Aeronautical technologies are catalysts for innovation and spill–over into other economic and technological sectors, thus contributing to the growth of the European economy as a whole. This trend shows that air transport is no longer is a political tool nor an instrument of hegemony.

Above all, this book is about a paradigm shift that the political world is undergoing which is equally applicable to air transport. International relations is no longer an exclusively State to State process. While it essentially remains a State to State process, an added dimensional link — that of State to society — is at play. Air transport has, for

most of the past been essentially State to State and now we find that States are realizing that social needs also have to be taken into account in the provision of air transport services. Connectivity has become paramount, requiring a holistic approach.

I have written this book on the eve of my retirement from a career in aviation spanning more than 30 years. It offers no magic formulae but presents perspectives for consideration. I hope it will provide both a prospective look at the future as well as an opportunity for the reader in the years to come to retrospectively evaluate how the problems and issues discussed herein were handled.

The discussions in this book are based on the prevailing economic, political and legal situation in August 2012.Ruwantissa Abeyratne, Montreal, July 2012.