

# EU's External Open Skies Policy

EU-Third Country (China, Japan) Open Skies  
Agreement

Jiangtian Xu

University of East Anglia, UK

# Contents

- ◆ What is Open Skies Policy
- ◆ Key Open Skies Provisions
- ◆ Chicago Convention and Freedoms of the Air
- ◆ WTO Annex of Air Transport Service
- ◆ Development of International Aviation Regulation
- ◆ Different Types of Aviation Agreements
- ◆ ECJ's Open Skies Case Ruling
- ◆ EU's Open Skies Policy
- ◆ Conceptual Framework

# Contents

- ◆ Regime Definition
- ◆ Factors of Regime Development
- ◆ How China perceives international regime
- ◆ China's initiative to establish China-led international regime. One Belt One Road Strategy
- ◆ EU-China Aviation Relations
- ◆ EU-Japan Aviation Relations

# Open Skies Policy

- ◆ Perfect Version but Mission Impossible: Fly anywhere in the world without any restrictions
- ◆ Practical Version
  - ◆ 1. Liberalize the rules of international aviation
  - ◆ 2. Minimize government intervention

# Key Open Skies Provisions

## US Department of Transportation

- ◆ **Free Market Competition** (No restrictions on international route rights; number of designated airlines; capacity; frequencies; and types of aircraft )
- ◆ **Price Determined by Market** (Double Disapproval Pricing)
- ◆ **Fare and Equal Opportunity to Compete**

# Key Open Skies Provisions

- ◆ Cooperative marketing arrangements (Code-Sharing or Leasing Agreement)
- ◆ Dispute Resolution Mechanism
- ◆ Liberal Charter Arrangement
- ◆ Safety and Security
- ◆ 7th Freedom Cargo's Right

# Why the Skies are not Open?

- ◆ Chicago Convention 1944

1. Article 1 and Article 2

every country has the sovereignty of airspace over its territory

2. Freedoms of the Air can only be gained through bilateral agreement

# Freedoms of the Air

- ◆ 1st Traffic Right: Flying over another contracting state without landing
- ◆ 2nd Traffic Right: Landing on another contracting state in emergencies or for refueling, without any business purposes.
- ◆ 3rd Traffic Right: Discharging passengers, cargo and mails in another contracting state.
- ◆ 4th Traffic Right: Taking on passengers, cargo and mails from another contracting state.
- ◆ 5th Traffic Right: Taking on passengers, cargo and mails from the second contracting state to the third contracting state.



# Freedoms of the Air

- ◆ 6th Traffic Right: Taking on passengers, cargo and mails from the second contracting state via the home state to the third contracting state
- ◆ 7th Traffic Right: Taking on passengers, cargo and mails from the second contracting state to the third contracting state without passing by the home state
- ◆ 8th Traffic Right: Operating between the home country and another contracting country, but the airline can fly to the third point in home country or a second contracting country before landing to the destination.
- ◆ 9th Traffic Right: Taking on passengers, cargo and mails from one point to another point in other contracting state.

# WTO Annex on Air Transport Services

- ◆ The General Agreement on Trade in Services of WTO contains Annex on Air Transport Services
- ◆ Deregulation of Air Transport Services ONLY
- ◆ Article 3. The Agreement shall apply to measures affecting:
  - (a) **Aircraft repair and maintenance services;**
  - (b) **The selling and marketing of air transport services;**
  - (c) **Computer reservation system (CRS) services.**

# Development of International Aviation Regulation

- ◆ 1919 Paris Convention
- ◆ **1944 Chicago Convention**
- ◆ 1945 Establishment of IATA
- ◆ 1946 UK-US Bermuda 1 Agreement
- ◆ 1947 Establishment of ICAO
- ◆ 1977 UK-US Bermuda 2 Agreement
- ◆ 1992 Netherlands-US Open Skies Agreement
- ◆ 1997 Single European Aviation Market
- ◆ **2002 ECJ's Open Skies Case Ruling**
- ◆ **2010 EU-US Open Skies Agreement**

# Different Types of Aviation Agreements

- ◆ **Multilateral** (ICAO, IATA, WTO, Airline Alliances, EU-US Open Skies Agreement) **VS Bilateral**
- ◆ **Regional Integration** (Single European Aviation Market, 1987, 1992, 1997, ASEAN Open Skies Agreement 2009)
- ◆ **Protectionism** (UK-US Bermuda Agreements 1946) **VS Liberalism** (US-Netherlands Open Skies Agreement 1992)

# ECJ's Open Skies Case Ruling

- ◆ Nov 5, 2002, C 466/98, C467/98, C 468/98, C469/98, C471/98, C472/98, C475/98, C476/98
- ◆ The advocate-general, Antonio Tizzano
- ◆ Open Skies Agreements between Eight EU member states and US have infringed external competences of the Community in concluding such agreements and infringed the provisions of the EC Treaty concerning the right of establishment.
- ◆ **EU gained the right (Member States lost the right) to negotiate Aviation Agreements with third countries.**

# ECJ's Open Skies Case Ruling

- ◆ **Nationality clause:** agreements allow a state to reject a foreign designated air carrier if the carrier is not “substantially owned and effectively controlled” by the designating State or its nationals. The effect of this clause is to limit cross-border investment and competition.
- ◆ **Limits on foreign ownership and control:** In the US the airline must have US ownership and control, similarly EU law prohibits non-EU stakeholders from owning a majority of an EU carrier or having the possibility of exercising decisive influence over an EU carrier.
- ◆ **No right of establishment:** A right of establishment allows an airline or other investor from one country to establish an airline in another country, either by acquiring an existing carrier or starting up a new one. The existing Open Skies agreements do not provide a right of establishment.
- ◆ **No stand-alone or consecutive cabotage:** An airline from one Open Skies country cannot carry domestic traffic between two points within the territory of the other country, not even in the course of providing international service.

# EU's Open Skies Policy

- ◆ EU signed Open Skies Agreement with US 2007(Phase 1),2010(Phase 2),2011(Norway, Iceland)
- ◆ 2005 EU-China Aviation Summit in Beijing, Joint Declaration of EU-China Cooperation of Civil Aviation (No other achievement since then)
- ◆ Average annual growth in air travel in China has been 16% between 1958 and 2002 (45 years!). In 2010, the overall EU-China air passenger traffic market was 5.25 million passengers, which represents an increase of 11.3% compared to 2009
- ◆ EU ASEAN Aviation Summit: February 2014 For Open Skies Agreement
- ◆ EU ASEAN The EU and ASEAN: A partnership with a strategic purpose, Shangri-La Dialogue, Singapore May 2015
- ◆ EU-Japan NO SUMMIT AT ALL!

# EU Internal and Neighborhood

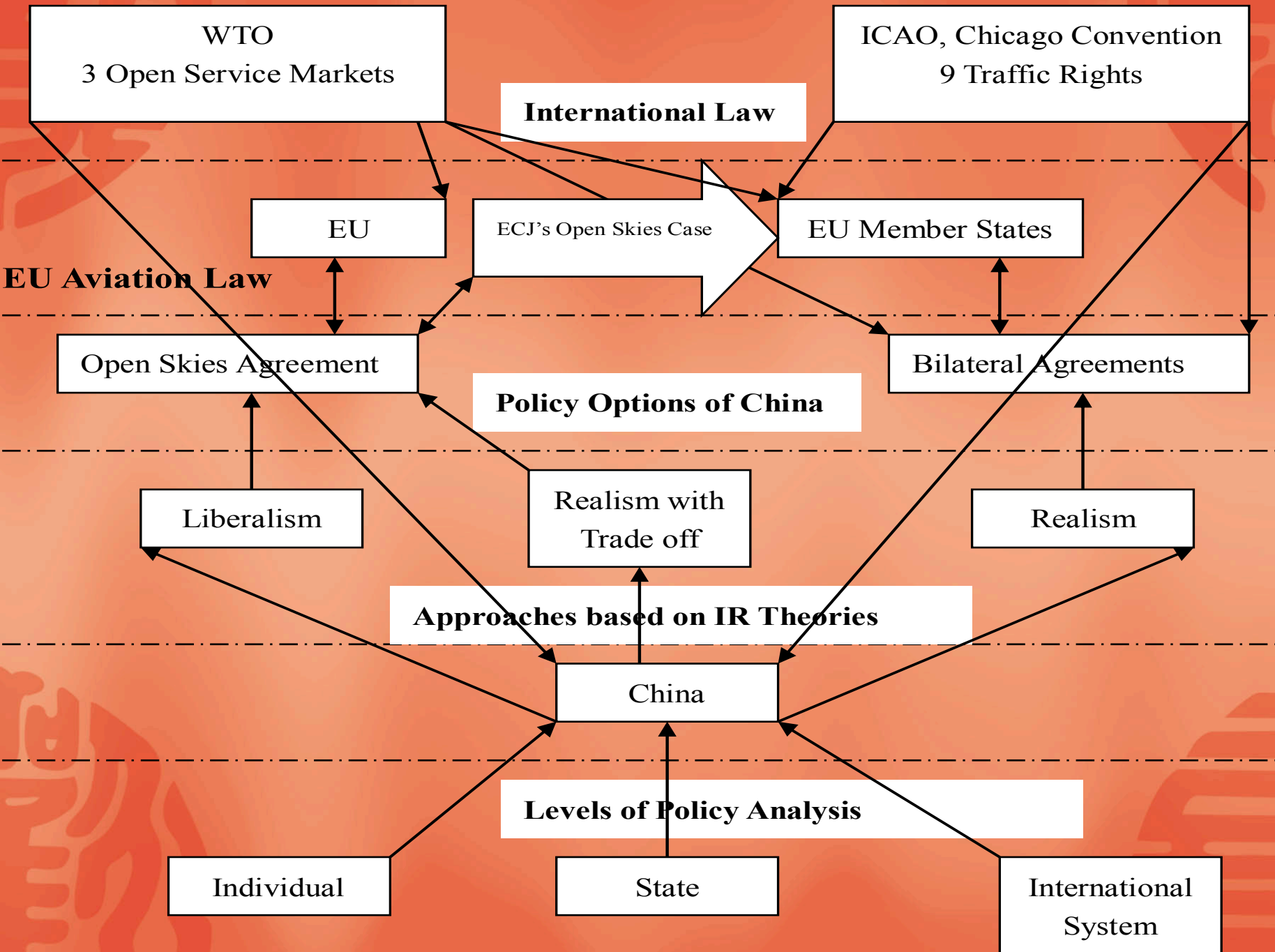
- ◆ European Common Aviation Area: EU Members+EFTA
- ◆ Agreements Signed: Albania, Bosnia, Macedonia, Montenegro, Serbia, Kosovo, Morocco, Jordan, Georgia, Moldova
- ◆ Signature Pending: Israel
- ◆ Under Negotiation: Ukraine, Lebanon, Azerbaijan, Algeria, Tunis
- ◆ Potential Agreement: Turkey, Armenia, Egypt, Syria Libya



# EU's Aviation Relations with Towards Third countries

- ◆ Agreement Signed: US and Canada
- ◆ Agreement Signature Pending: Brazil
- ◆ Agreement Negotiation: Australia NZ
- ◆ Potential New Agreement: Russia, China, India, Japan, ASEAN, UAE, Qatar

# Conceptual Framework



# Definition of Regime

## Krasner

- ◆ principles, norms, rules, and decision-making procedures around which actors' expectations converge;
- ◆ different from ad hoc agreements, in that they embody long-term practices

# Definition of Regime 2

- ◆ principles: beliefs of facts, causation, and rectitude
- ◆ norms: standards of behavior defined as rights and obligations
- ◆ rules: specific prescriptions and proscriptions for action
- ◆ decision-making procedures: prevailing practices for making / implementing collective choices

# Definition of Regime 3

- ◆ **principles and norms** are the **defining characteristics** of a regime; alterations indicate change of the regime
- ◆ **rules and decision-making procedures** are the **functional behavior** within a regime; alterations indicate change within a regime
- ◆ regimes weaken when incoherence or inconsistency between actual practice and regime principles arise

# Factors for Regime Development(Change)

- ◆ B. regimes as intervening variables: causal variables (IV) -  
> regimes -> related behavior and outcomes
- ◆ Self interest: for absolute gain. **Regime reduces transaction cost and prevents market failure** (Keohane)
- ◆ Political Power: 1. for common good 2 for particular interests **hegemons create institutions that maximize relative gains (re: Krasner 1976); regimes weaken when hegemons decline**
- ◆ Norms and Principles
- ◆ Usage and Custom
- ◆ Knowledge

# EU and International Regime

- ◆ Economic Giant, Political Dwarf. One Voice in WTO and Trade Issue, but many voices on political issues, Iraqi War, Afghanistan War, Refugee, Euro, Ukraine, Russia (No seat of EU at ICAO) Head of IMF, Head of WTO
- ◆ Symbolic Appearance in global summit G8,G20 etc.
- ◆ No Common Media, No Common Language, No Common EU party, No Common EU Election, far from being a political hegemon due to different understanding on EU's future direction. United States of Europe?

# China's and International Regimes

- ◆ Peaceful Rising, no intention to be global hegemon due (failure of Soviet Union)
- ◆ Economic gains first, China's aid and loan do not have pre-condition of political issues (China-Africa Relations)
- ◆ Embed into international regimes (2001 WTO Accession)
- ◆ No challenge to US power globally, but Constrain US in Asia Pacific, China-Philippine, China-Japan. Ignorant on TPP led by US, but having AIIB



# China and International Regimes

- ◆ Focus on Regional Issues: Shanghai Cooperation Organization, ASEAN+China, APEC, ASEM

- ◆ Not in favor of Western led multilateralism

Not very active in UN, G8+5, G20, US-China Summit, not a broker between North and South, No OECD Membership, but has membership of International Transport Forum of OECD

# China-Led Multilateralism

- ◆ China is having the grand national strategy to promote the **China-Led, or China-favored Multilateralism**, which tries to break the old international regime with some major progress. One Belt One Road National Strategy
- ◆ The initiative to jointly build the Belt and Road, embracing the trend **towards a multipolar world**, economic globalization, cultural diversity and greater IT application, is designed to uphold the global free trade regime and the open world economy in the spirit of **open regional cooperation**.

- ◆ It is aimed at promoting orderly and free flow of economic factors, highly efficient allocation of resources and deep integration of markets; encouraging the countries along the Belt and Road to achieve economic policy coordination and carry out broader and more in-depth regional cooperation of higher standards; and jointly creating an open, inclusive and balanced regional economic cooperation architecture that benefits all (Asia Infrastructure Investment Bank). Jointly building the Belt and Road is in the interests of the world community.
- ◆ Reflecting the common ideals and pursuit of human societies, it is a positive endeavor to seek new models of international cooperation and global governance (AIIB), and will inject new positive energy into world peace and development (BRICS Bank) .





Photo: ST

# Institutionalization of China-Led Multilateralism

- ◆ AIIB, Proposed in 2013, Headquartered in Beijing, with all the major world economics in apart from US (World Bank) and Japan(ADB) IMF officially welcomes the establishment of AIIB, establishment in 2015
- ◆ New Development Bank (BRICS Bank), establishment in 2016 in Shanghai, first head from India

# Right Timing of China-Led Multilateralism

- ◆ US has liberal hegemony, without large-scale war or global financial crisis, the US liberal hegemony is immune to future hegemonic challenges (John Ikenberry, 2008, Kyung Hee University Seoul)
- ◆ Global Financial Crisis since 2008, Euro Crisis, PIGS of EU, Cyprus
- ◆ ADBI report: till 2020, every year, ASIA needs ~\$800 billion for infra-structure investment. ADB has 24 billion a year
- ◆ China was not affected by these crisis due to relatively closed financial system, so China has extra money to invest

# China's Rising Leadership in UN Chapters

- ◆ Yifu Lin Vice, President of World Bank and Chief Economist 2008-2012
- ◆ Min Zhu, Deputy Managing Director of IMF 2011-
- ◆ **Chan Fung Fu-chun**, General Director of WHO 2006-
- ◆ Xiaozhun Yi, Deputy Director-General of WTO 2013-
- ◆ Yong Li, Director General of UNIDO 2013-
- ◆ Dr. Fang Liu, Chinese Female Lawyer, Director General of ICAO 2015-
- ◆ Jiuyong Shi, President of International Court of Justice 2003-2006



# EU-China Open Skies Agreement

- ◆ Theoretically YES. EU granted the right by ECJ to negotiate the aviation agreements with third country, successful case US-EU Open Skies Agreement, other ongoing cases
- ◆ Partially it depends
- ◆ One Belt One Road Strategy for Aviation

First China-Prague, China-Budapest routes open 2015

- ◆ Play EU card when US-China relations bad
- ◆ Trade off between Aviation and other policy
- ◆ Under AIIB?
- ◆ After EU-ASEAN Open Skies Agreement?
- ◆ Achievement of new Chinese General Director of ICAO? EU membership to ICAO? China-EU Open Skies Agreement (China Us already had very liberal aviation agreements).

# EU-China Civil Aviation Agreement

- ◆ No from China (China-Led Multilateral aviation regime under One Belt One Road)
- ◆ China has no capacity to compete with EU in EU-China routes (air crafts, human resouces, technology)
- ◆ EU led or China led agreement? Protection or Liberal?
- ◆ After 2005 EU-China Summit, 10 years on no progress
- ◆ In terms of Aviation, China cares more on big aviation powers of EU, as well as eastern European countries
- ◆ Current China-EU member states civil aviation agreement still suitable for China and EU member states to have win-win situation
- ◆ EU does not have a seat at ICAO, no power from ICAO to negotiate aviation rights

# EU-Japan Aviation

- ◆ Probably NO
- ◆ No intention from Japan, No summit or any other major progress on cooperation
- ◆ Not comparable with EU Capacities
- ◆ Possible Tradeoff? No
- ◆ Heavy blow to Japan's civil aviation if signed  
JAL bankruptcy in 2011, ANA OK

# EU New Aviation Hegemony

Possible but difficult if still political dwarf

- ◆ Civil Aviation Policy is complex, combines consideration of political, cultural, economic, military (security after 911) situations.
- ◆ Target ASEAN, similar model, upgraded partnership, export oriented, concentrated competition (hot spot cities are not so many in ASEAN for EU airlines)
- ◆ Membership of ICAO
- ◆ EU-Russia Aviation relations (Russia is the most important aviation partner of EU, due to routes and location)
- ◆ Reform of ICAO to be more policy driven. Currently more technical issues, less binding power
- ◆ New International Convention of Multilateralism
- ◆ Finalize all the current aviation negotiation

# Questions?

- ◆ [xujiangtian@icloud.com](mailto:xujiangtian@icloud.com)