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Book Reviews

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BOOK REVIEWS

COSMIC INTERNATIONAL LAW, by Modesto Seara Vázquez. Translated by Elaine Malley. Wayne State University Press, Detroit, 1965, pp. 293. \$9.95

Though the author does not claim to have originated the name for the newest field of law which he uses for the title of his book, he does explain how aptly it describes the purpose of the volume. Rejecting the common "Law of Outer Space" and several other terms that have been used, he states that his interest is primarily in the legal relations between states arising from their activities in outer space; hence the international law of the cosmos, or "Cosmic International Law." But of course he recognizes that relations between States depend upon the activities of individuals not always acting as representatives of States. The book is necessarily concerned often with such problems as the complications which may arise from occupation of a planet by a private individual or a corporation, or from contact with human beings or super human beings elsewhere in the solar system.

One of the most interesting chapters, to this reviewer, discusses the proposal that activities in outer space should be limited to those which can be characterized as "peaceful." The author points out that this concept was advanced in 1952 before space exploration began, and was a basic factor in a program suggested to the United Nations General Assembly before the first Sputnik went up. Though he says it is

generally conceded that cosmic space should be used only for peaceful purposes, and no lawyer or politician would defend, at least openly, a position to the contrary (p. 150)

a clarifying statement a few pages later (p. 158) makes it obvious that he does not regard this limitation presently established as international law. It is nonetheless a desirable objective frequently declared and earnestly sought by all the powers, if we are to judge from their public pronouncements, and the author examines some of the difficulties in defining "peaceful uses" or "peaceful activities."

At first glance the meaning seems so obvious that definition appears superfluous. Activities which are regarded as peaceful and law abiding on land and sea are surely also peaceful in outer space. Just as the States may send naval craft out on the high seas, so they may also send war craft into outer space, without being guilty of other than peaceful activities in either area. This is the interpretation put upon the term by both the United States and Soviet Russia, in supporting Resolution 1962 (XVIII) with a preamble recognizing "the common interest of all mankind in the

. . . use of outer space for peaceful purposes," a resolution which was unanimously adopted by the United Nations General Assembly on 13 December 1963. The same interpretation is expressed in the National Aeronautics and Space Act of 1958¹ and clearly stated by Professor John Cobb Cooper in his recent article in the December 1965 number of the American Bar Association Journal.² If this is what "peaceful uses of outer space" means, the phrase is practically meaningless. In such case, Professor Vázquez says, the prohibition in outer space of other than "peaceful activities" adds nothing whatever to existing law (p. 154). The author's persuasive argument is that the limitation of outer space to "peaceful activities" was intended to set up a different rule for that area. We are disinclined to have foreign, possibly hostile warcraft passing overhead in outer space at will, and it is for that reason that limiting the use of outer space to peaceful activity is deemed necessary. It was the danger of hostile bombers in the atmosphere which completely eliminated the theory, widely supported before 1914, that the air space was as free as the high seas. National sovereignty of the underlying state in its air space, and power to control or exclude all aircraft therefrom, is universally admitted in 1966 because of the danger to the state which would be inseparable from any other rule. Much the same hazards to the underlying state may be located in outer space, unless national activities therein are subjected to limitations which are not imposed upon their activities on the high seas. Hence, the "peaceful uses" to which national activities in outer space should be restricted must mean, as the author says, non-military uses. He does not touch the serious difficulty of distinguishing military from non-military activities.

The United States' "space needles" experiment comes in for deserved criticism (p. 181 ff.). Even if the confident statements by United States authorities that no harm would result are proved correct, an unfortunate precedent has been created in the complete disregard of protests from other States. Any nation's scientists who plan an experiment in space may now, with some justification, feel free to proceed without even consulting other scientists as to the possible effect. An excellent opportunity to create a valuable precedent here was deliberately ignored by failing to consult an international body before engaging in the experiment.

Both major nuclear powers are justifiably criticized for conducting experiments which necessitate closing areas in the high seas to all navigation (p. 206 ff.). To drive home the point that such unilateral limitations on high seas navigation is contrary to international law, the following statement is made in an earlier chapter (p. 116): "Finally, the Commission on International Law [*sic*] had already made an express prohibition of such acts." From the inadequate citation it seems that the reference here must be to the International Law Commission set up by the United Nations General Assembly, and as such the statement is not accurate. The International Law Commission cannot expressly prohibit anything; it has no legislative

¹ 72 Stat. 426, 42 U.S.C. § 2541 (a) & (b) (1964).

² Cooper, *The Manned Orbiting Laboratory: A Major Legal and Political Decision*, 51 A.B.A.J. 1137 (1965).

power and does not purport to make law. The Commission does not go beyond recommendations to the General Assembly, and such recommendations have little or no force as law until incorporated in a convention which has been ratified by enough States to make it effective among themselves.

On one matter, at least, the author's logic appears to be an example of extreme pedantic formalism. Starting from the thesis that "to define, from the Latin *definire* means to establish limits," (p. 37) (which is only one of several definitions listed for the word), and the concept that outer space is limitless, he proceeds to the conclusion that it is impossible to "define" space; limits cannot be set to that which is naturally limitless. Then, he states:

If we acknowledge that space cannot be defined either as an object or as a phenomenon, we come to the conclusion that space is not a thing in the legal sense of the word, and cannot *per se* be the object of a law on the part of nations . . . (p. 38).

Therefore, space is neither *res communis*, *res nullius*, *res extra commercium*, nor *res communis omnium*, because it is not a *res* (p. 39). He does not follow his logic (as a medieval scholast might have done) to the conclusion that space is non-existent:

The path of our reasoning has led us to exceedingly rich conclusions. If space cannot be defined because it is impossible to set limits to it, and if therefore it cannot be classified as a *res*, it cannot be subject to laws, because only things, in the legal sense of the word, can be subject to law (p. 40).

The author recognizes, however, a field in which cosmic international law can operate; while space itself is not subject to regulation, according to the foregoing extraordinary logic, yet human activities in space, and all bodies in space, being definable and therefore having the characteristics of a *res*, are subject to regulation by law.

Some errors, typographical or translational, have crept in, on matters of detail, mostly not troublesome. The reviewer of a translated work often cannot be quite sure whether he is commenting on the translation, or on the original text. But this book leaves one reader, at least, with the impression that on most matters the discussion does not go far below the surface. On many of the questions raised, the problem is simply mentioned, with little attempt at solution, analysis of the difficulties, or even detailed examination. One of the first questions in the field of cosmic international law is how and where to fix the boundary between the air space, where sovereignty of the subjacent state terminates, and the outer space or cosmos which is free. On this problem the author states the conclusion of seven authorities with one or two short sentences for each, and passes on (pp. 51-52). There is no comparison of the several conclusions, no exposition of their practicability, nor of the arguments that can be made for or against them. The problem is not taken up elsewhere in the book, except for one later sentence, in which the author apparently presents his own view. The only support is a statement (p. 135) which may be correct,

but is not so obvious as to stand without further exposition:

This zone [above the surface sovereignty] could begin at 36,000 kms, since beyond that the principle of the freedom of navigation is superior to that of the state's right to security.

The author is not here concerned by the fact that he appears to be setting a limit to that which he has earlier declared to be without limits.

Footnote references frequently omit page numbers in the book from which a quotation is made, and sometimes omit also the name and volume of the periodical in which an article was published. The terms "Committee" and "Commission" are sometimes used interchangeably. Six different names are used on different pages to refer apparently to the United Nations Committee on the Peaceful Uses of Outer Space; the names used in this volume are "Commission on Space," "Commission on Outer Space," "Commission on Cosmic Space," "Commission on the Peaceful Uses of Outer Space," "Commission on Use of Outer Space for Peaceful Purposes," and "Committee on Cosmic Space."

These are possibly secondary matters of detail. The book is nonetheless an interesting presentation of some new ideas in a field which has attracted increased attention for the last ten years, and will certainly attract more attention in the next decade.

*John P. Dalzell**

ISSUES IN TRANSPORTATION ECONOMICS, by Karl M. Ruppenthal. Charles E. Merrill Books, Inc., Columbus, Ohio, 1965, pp. 349. \$8.50 (paper, \$7.25)

In the light of the great importance of transportation in the American economy, it is not surprising that public issues in transportation economics engender heated debates. The pervasiveness of this importance of transportation, which affects employees, investors, stockholders, lenders, customers, cities, states, large regions, whole industries, and indeed, the entire economy, insures that all manner of diverse individuals, groups, firms, and government agencies can be expected to take strong positions on one side or the other of various transportation issues. Professor Ruppenthal has selected several important issues in transportation economics—limited essentially to domestic surface freight carriage—and has sought to expose them to his readers by presenting in this book selected statements of a wide range of persons interested in these various aspects of transportation economics. These statements are, for the most part, arguments for or against a particular position, except that, in a few cases, they are essentially expository in nature.

The eleven major issues which he has selected are: (1) Promotional Subsidies for the Construction of Transportation Facilities, (2) The Government and Equipment Purchases, (3) Maritime Conferences and the Dual

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Rate System, (4) Railroad Consolidation, (5) How Much Government Regulation? (6) Transportation Pricing Theory, (7) Some Competitive Aspects of Transportation Pricing, (8) The Question of Common Ownership, (9) User Charges, (10) Minimum Rate Regulation, and (11) The Common Carrier System. For each of these eleven issues, Professor Ruppenthal has written a brief (three to eight pages) summary of the background and the economics of the problem. These introductory summaries, which are clear and informative, are followed by anywhere from two to a dozen selected statements bearing on the specific issue. These statements are, in whole or in part, published articles, speeches, testimony, public relations releases, newspaper articles, or letters. Their individual length and level of sophistication range over a wide spectrum. Some are scarcely a page in length, while others may run for several pages. Some are naive, self-seeking statements, written by representatives of interested parties, while others are reasoned, sophisticated statements made by knowledgeable observers.

Since much of the material in the entire book is concerned in one way or another with the relationship of the railroads to the truckers and the domestic water carriers, the well-known general cost characteristics of the railroad industry are of central interest and importance. This reviewer was intrigued to observe that so many people in the transportation industry seem to have discovered for themselves—and so recently—the simple principles of marginal costs, and that they are so pleased with their discovery that they hasten excitedly to carry their message to the people. Often they are so impressed with its charms that they strive to display their creation much as does the magician as he strips away the silken coverlet, fully expecting the audience to gasp appreciatively at what has been exposed.

In general the selected statements, as might be expected, are economically unsophisticated, and, in many cases, a lengthy statement could be summarized in one or two sentences for an audience which had had even a cursory exposure to the elements of economic theory. However, the compiler's purpose was not to provide a sophisticated answer to each issue, but rather, as stated in the foreword, he sought to *raise* the issues. This he has done. The uninitiated reader can quickly and easily gain an understanding of these issues, an appreciation for their importance, and a feeling about the nature and intensity of the interests of the various involved parties. He will also gain, no doubt, a sense of awe and sympathy for the legislators, commissioners, judges, and administrators who must strip aside the arguments and the smokescreens of the self-seeking and the selfish, ascertain the true direction in which the public interest lies, and formulate official positions and make them work.

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AIR LAW, by DeForest Billyou (2d ed.), Ad Press, Ltd., New York, 1964, pp. vii. 674. Appendix. Table of Cases. Index. \$16

As Professor Billyou makes clear in his Preface, his revised treatise-case book, *Air Law*, might well be sub-titled "from the American point of view." Building on the material published in his first edition, he here expounds and illustrates the way in which air law is developing in the United States. As in the first edition, the depth and scope of treatment of the various subjects covered differ widely but at least an introduction to almost every matter one could conceive of under the overall title is presented here and the text is amply footnoted to permit in-depth further study by the reader.

Professor Billyou provides a brief introduction to air law in his first chapter, stressing the role of the federal government in American practice. He then proceeds to a more extended discussion of sovereignty in airspace, noting the relevant treaties, statutes, and cases, again using the form of a footnoted text. The third chapter takes up the problem of airports, focusing particularly on the noise question with extracts from some of the cases, including *Martin v. Port of Seattle*.¹ A brief treatment of the somewhat related problem of the sonic boom is also included.

The fourth chapter delves into the complex question of legal liability to interests on the ground and to passengers and shippers. Liability of governments and manufacturers is explored at some length. There is an examination, through text and extract, of state and federal law and of the relevant international conventions. The Warsaw Convention is treated extensively. There are also comments on crop spraying and weather modification activities. Again, while much of the approach in the text is brief, there are numerous footnotes and bibliographical notes to aid the researcher.

A short fifth chapter deals with crimes and other acts on board or related to aircraft, largely with respect to United States statutes. The British approach is also noted as is the Tokyo Convention of 1963.

Other chapters deal briefly with liens and security interests in aircraft, the taxation of aircraft activities, the air law of other countries, and the question of supersonic transport. The economic problems of the U. S. airline industry and the general problems of air carriers in international commerce receive an extended but nevertheless somewhat superficial or biased treatment and the chapter might well be drastically cut in a future revision of a treatise on air law. Space law is covered only by way of a long bibliographical note, which includes some of the materials published through 1964, and by reprinting a 1961 article by James T. Lyon which was not particularly noteworthy when published and is hopelessly out of date now. Again, it might be suggested that developments with respect to outer space activities should either be omitted as inappropriate to this text or covered more fully.

Almost half of the book is given over to a reprinting of a vast number of United States statutes and executive orders and to multilateral air law

¹ 64 Wash. 2d 324, 391 P.2d 540 (1964). Noted, 30 J. AIR L. & COM. 287 (1964).

conventions. These help to make the book a highly useful one-volume introductory reference work to the field of national and international air law.

Howard J. Taubenfeld

BOOK NOTES

AIR LAWS AND TREATIES OF THE WORLD, U.S. Senate Committee on Commerce. U.S. Government Printing Office, Washington, D.C., 1965, 3 vols., pp. 4483. \$12.50

Air Laws and Treaties of the World is a compilation of all multilateral aviation treaties in force, all bilateral aviation agreements and route grants to which the United States is a party, and the national laws of 120 countries. The three volumes were prepared at the request of Senator Warren G. Magnuson, chairman of the Senate Committee on Commerce. The *Preface* describes it as follows:

This compilation has been planned to serve as a complete and up-to-date reference and research tool for the Congress and the Government in general, as well as for the legal profession and scholars here and abroad. It provides a readily available text of all pertinent materials, and serves as a guide for drafting new air legislation. This availability of an authoritative comparative law source may lead to increasing unification of the aviation statutes of the various countries.

Volume I includes the national aviation laws of fifty-two countries, in alphabetical order, from Aden to Italy. The major acts and codes in these nations are generally set out in detail, although the less important laws and decrees are merely cited; they are all presented in English. Volume II is like the first, covering the aviation laws of sixty-two countries, from the Ivory Coast to Zanzibar.

The third volume contains the eight major multilateral aviation agreements: Paris, 1919; Habana, 1928; Warsaw, 1929; Rome, 1933 (both conventions); Chicago, 1944; Geneva, 1948; and Rome, 1952, as well as the bilateral air transport agreements to which the United States is a party. An Appendix sets out the route grants in bilateral agreements and the status of international services by United States and foreign carriers.

Air Laws and Treaties of the World is a handy reference for anyone dealing in air law. It is a unique contribution to this field.

L.M.F.

FEASIBILITY OF POOLING STATE-OWNED AIRCRAFT, A Report to the 59th Legislature by the Texas Legislative Council, Austin, 1964. pp. 70.

This interesting pamphlet is, of course, directed to the problem posed in its title with regard to the State of Texas. It presents a thorough analysis

of the state-owned aircraft in Texas, including type and uses. In addition, the use of privately-owned and rental aircraft and commercial aircraft by state officials involved in official business is considered. As the Summary points out (p. 5), the pamphlet includes a tabular listing of the "practices in other states regarding state-owned aircraft, with particular attention to aircraft pooling operations" plus "laws and rules in Texas and other states regarding aircraft and their use by state departments, agencies, and institutions."

The analysis of the problems, the compilation of information, and the conclusions and recommendations of the Texas Legislative Council (including a draft statute) would be well worth obtaining by officials in other states interested in the pooling problem.

C.A.T.