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## Book Reviews

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## BOOK REVIEWS

AIR TRANSPORT POLICY AND NATIONAL SECURITY: A POLITICAL, ECONOMIC, AND MILITARY ANALYSIS, by Frederick C. Thayer, Jr. University of North Carolina Press, Chapel Hill, 1965, pp. xxiii, 352. \$8.00

For many years military airlift policy and commercial air transport policy have been treated as two entirely different subjects, totally independent of one another. Those responsible for shaping public policies have made little or no effort to find any inter-relationship between these two. Current military airlift and commercial air transport policies are the product of several major decisions that were made under various administrations, and although no particular individual, political party, or interest group is to be blamed, the existing policies are far from satisfactory. Several important recent developments have made the United States air transport policy a major focus of public attention. The widening competition between United States and foreign air carriers, the race for supersonic transport, and the ever-increasing importance of strategic military airlift to defense policy are among such developments.

The main purpose of this book, which is based on the author's doctoral dissertation at the University of Denver's Graduate School of International Studies, is to underscore the inter-relationship of the political, military, and economic aspects of both commercial air transport and military airlift policy.

The author has taken an interdisciplinary approach to the question, noting that many political scientists studying defense policy have, in their preoccupation with broad strategic questions, overlooked economic problems and even some of the precise military questions, while most of the economic studies of air transport have almost completely bypassed questions of foreign policy and military strategy. The author, who has a great deal of experience with operational and staff assignments involving air transport and airlift, has found it necessary to include at various points specific suggestions for refinement of economic theory, revision of the airline regulatory process, and comments of specific military strategies. These suggestions are particularly useful, since in the past the United States has too quickly rejected reasonable and pragmatic solutions in favor of less satisfactory policies.

To show the importance of air transport policy as an economic and military instrument of foreign policy, the author has traced the development of air transport in the United States since its early days and has raised some valid policy questions with regard to the basic underlying philosophy behind the organization of the Civil Aeronautics Board. He

has presented an excellent account of the impact of two world wars on United States air transport policy and the manner and extent to which various events and interest groups exerted their influence on this policy. Parts II and III, roughly one-half of this book, are devoted to the military airlift and the airlines during World War II, the significant policy changes following the war, the subsequent interest groups' activity that triggered congressional interest, and congressional policy-making during the second Eisenhower administration.

Looking at the pattern of international air transport as represented by both scheduled and supplemental United States air carriers, the author finds it difficult to justify the direct competition that has long existed in this field. From a political point of view, such a system does not provide the Government with absolute assurance that the airlines will respond immediately and satisfactorily to the needs of foreign policy. From an economic point of view, the existence of several airlines competing with each other leads to wasteful expenditures on equipment, facilities, and advertising and prevents any airline from reaching optimum operational level in a relatively sparse travel market with its higher overhead cost. From a military point of view, a single air carrier, with its higher aircraft utilization, efficient "airlift-conveyor belt," and trusted efficiency of its crew, can provide better, faster, and more efficient military and strategic airlift. United States air transport policy must seek to balance the national, political, economic, and military interests. Toward this end, the Government must find an alternative to the existing policy.

Reorganization of the existing international companies in order to form three regional airlines is the author's proposed alternative. Such a reorganization would produce three new airlines with only one airline operating exclusively in each of the regional markets of Europe, Latin America, and the Pacific. The author estimates that the size of such reorganized airlines would be comparable to that of the largest domestic trunkline. Regulation of these airlines may be accomplished by setting up a joint committee consisting of the Departments of Defense, State, and Commerce, the three regional airlines, and possibly the Civil Aeronautics Board as a minority member. According to the author, this pattern, which corresponds to the military system adopted during World War II, would help reinstate a government-industry partnership in the most meaningful sense of the term; emphasize that issues at stake in air transport policy are part of foreign and military policy; and discard the notion that regulation of international airlines is not a matter for the executive branch.

In this excellent interdisciplinary study, the author has presented a strong case for the integration and attainment of a proper balance of various political, economic, and military aspects in national air transport policy. However, the arguments presented by Colonel Thayer toward the main thesis of this book, namely that airlift policy and commercial air transport policy should ideally not be treated separately, at times tend to overemphasize the military considerations while bypassing the various

political and economic issues involved. Moreover, he has failed to advance strong and forceful reasons for air transport policy being a vital instrument of United States foreign policy. Simply because airlines provide or should provide airlift to the Army, we cannot let the Departments of State and Defense run the nation's airlines. This would only help create a vast bureaucracy which is hardly desirable. The author does not treat domestic and international carriers as distinctly as he should, and at several points it is difficult to tell which of these is the subject of discussion.

In spite of its shortcomings, this book represents the most comprehensive survey of the field. Those interested in commercial air transport policy and military airlift policy will find this book to be among the best available on the subject. There is an excellent bibliography at the end which will be of special interest to those engaged in research.

*Nazir A. Ansari\**

THE AIR CODE OF THE U.S.S.R., translated and annotated by Denis A. Cooper. The Michie Company, Charlottesville, Virginia, 1966, pp. xx, 298. \$15.00

Within the last two years, two English translations of the new Soviet Air Code,<sup>1</sup> Cooper's and the Library of Congress version, have appeared in print in the United States.<sup>2</sup> Their publication has been timely, for the participation of the Soviet airline, Aeroflot, in world air transport has been growing, as has travel between the U.S.S.R. and the English-speaking countries. On 4 November 1966, the United States and the Soviet Union concluded an air transport agreement which provides for scheduled services between the two countries.<sup>3</sup>

The Soviet Air Code deals in a comprehensive manner with both public law and private law aspects of aviation. It not only declares Soviet sovereignty over the airspace above Soviet territory and regulates flights in such airspace, but also provides for the organization of Soviet air transport and prescribes rules governing the relations between air transport enterprises on the one hand and passengers and shippers on the other. In scope and content, it is comparable with such recent foreign legislation as the Swedish Aviation Law of 1957 or the Spanish Air Navigation Law of 1960 rather than with the United States Federal Aviation Act of 1958.

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<sup>1</sup> For the original official text, see 24 *Vedomosti Verkhovnogo Soveta Soyuzu Sovetskikh Sotsialisticheskikh Respublik* 1335 (1961). The new Air Code replaced that of 1935, an English translation of which appeared in *HOUSE COMM. ON SCIENCE AND ASTRONAUTICS, 87th CONG., 1st SESS., AIR LAWS AND TREATIES OF THE WORLD, AN ANNOTATED COMPILATION 1305* (Comm. Print 1961).

<sup>2</sup> In addition to the translation here reviewed, see *SENATE COMM. ON COMMERCE, 89th CONG., 1st SESS., 2 AIR LAWS AND TREATIES OF THE WORLD 2541* (Comm. Print 1965), which was prepared by Dr. Armins Ruis of the Library of Congress [hereinafter cited as *Library of Congress Translation*]. For a French translation, see 20 *REVUE FRANCAISE DE DROIT AERIEN* 186 (1966).

<sup>3</sup> Text in 55 *DEP'T STATE BULL.* 791 (1966).

Rendering a foreign code into English is a difficult undertaking. It requires a knowledge not only of the two languages, but also of the two legal systems. Since some foreign legal concepts and terms have no exact equivalents in Anglo-American law, literal translation of some passages may be impossible or misleading. The translator must be able to convey the real significance of the original text. Yet he should also avoid unnecessary departures from literal equivalents. The optimum translation is thus partly a matter of individual judgment.

It is hardly surprising that the two translations of the Soviet Air Code differ significantly in style and in the degree of literalism. For example, the very first section of the Code is translated respectively as follows:

The Union of the Soviet Socialist Republics exercises full and exclusive sovereignty over the airspace of the U.S.S.R.

Airspace of the U.S.S.R. shall mean the airspace above the land and water territory of the U.S.S.R., including the territorial waters, as determined by U.S.S.R. law and international agreements, entered into by the U.S.S.R.<sup>4</sup>

The complete and exclusive sovereignty over the airspace of the U.S.S.R. shall belong to the U.S.S.R.

Airspace of the U.S.S.R. shall be deemed to be the airspace above the land and water territory of the U.S.S.R. including the space above the territorial waters as determined by the laws of the U.S.S.R. and by international treaties concluded by the U.S.S.R.<sup>5</sup>

The most literal rendering of the Russian original would be the following:

To the Union of SSR belongs the full and exclusive sovereignty over the airspace of the USSR.

The airspace of the USSR means airspace above the land and water territory of the Union of SSR, including that above the territorial waters as defined by the legislation of the USSR and international treaties concluded by the Union of SSR.<sup>6</sup>

It is apparent that neither of the two translations is as literal as it could be, but the Library of Congress translation avoids ambiguity by omitting the misleading commas in the second paragraph. A sampling of the two translations indicates that the Library of Congress translator has on balance succeeded better than Colonel Cooper in combining clarity with exactitude.<sup>7</sup>

Realizing that a bare translation may not fully meet the needs of an American reader, Colonel Cooper has supplemented his version with several

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<sup>4</sup> COOPER, *THE AIR CODE OF THE U.S.S.R.* 37 (1966).

<sup>5</sup> Library of Congress Translation 2545.

<sup>6</sup> 24 *Vedomosti Verkhovnogo Soveta Soyuzo Sovetskikh Sotsialisticheskikh Respublik* 1335 (1961).

<sup>7</sup> A particularly inexplicable departure from exactitude in Colonel Cooper's translation occurs (at p. 139) in the rendering of § 130 concerning limitation of liability for injuries to passengers on international flights, where the words meaning "the capitalized payments may not exceed the aforementioned limitation" are translated as "the aggregate amount of such payments not to exceed the fixed amount." The Library of Congress translation (at p. 2567) is tolerably close to the original.

aids to fuller comprehension, including (1) section headings, (2) introductory "Notes on Soviet Civil Aviation,"<sup>8</sup> (3) abundant footnotes which explain the meaning of many Soviet legal terms and concepts, quote or cite relevant provisions from other Soviet legislation, make comparisons with the Chicago Convention of 1944 or American law, and provide much additional information, and (4) appendices containing a translation of the "Fundamentals of Civil Legislation of the U.S.S.R. and Union Republics," approved on 8 December 1961, and the text (in English translation) of the Warsaw Convention.<sup>9</sup> Also helpful are the table of contents and an elaborate index. Unfortunately, the usefulness of some of these aids is impaired by errors and misstatements. The reader is told that the Soviet Union has not ratified the Hague Protocol of 1955 which amended the Warsaw Convention.<sup>10</sup> This incorrect assertion is contradicted by the information presented in a table in Appendix C, which shows that the Soviet Union ratified the Protocol in 1957.<sup>11</sup> Citing two outdated Soviet publications of the pre-Sputnik era, Colonel Cooper creates the impression that the Soviets claim sovereignty upward to infinity.<sup>12</sup> He completely ignores the abundant Soviet literature (much of which is available in English translation)<sup>13</sup> and official Soviet statements to the contrary.<sup>14</sup> Commenting on the Soviet Code provision (section 76) concerning flights of pilotless aircraft, he makes the remarkably inaccurate statement that "present-day pilotless craft do not fly in *navigable* airspace."<sup>15</sup> It is confusing to read of the Soviet "Ministry of the Civil Airfleet" which elsewhere in the book is correctly described as "Ministry of Civil Aviation."<sup>16</sup> Without explanation, three hundred rubles is said to be "less than \$300."<sup>17</sup> Although this may be true in terms of purchasing power (how and where measured?), the official exchange rate is \$1.11 per ruble. More meaningful statistics of the traffic of Aeroflot, the Soviet airline, could be given than those supplied by Colonel Cooper.<sup>18</sup>

Despite these errors and inadequacies, Colonel Cooper's aids to the

<sup>8</sup> COOPER, *op. cit. supra* note 4, at 3-32.

<sup>9</sup> *Id.* at 157-273. The translation of the Warsaw Convention is marred by printer's confusion with the Hague Protocol (at p. 240).

<sup>10</sup> *Id.* at 25 n. 70. Strangely, this error also occurs in the Library of Congress translation (at p. 2541).

<sup>11</sup> COOPER, *op. cit. supra* note 4, at 240. The U.S.S.R. was one of the first eight states to ratify the Protocol. See, e.g., ICAO, ANN. REP. OF THE COUNCIL TO THE ASSEMBLY FOR 1957, Doc. No. 7866, All-P/3 at 44 (1958).

<sup>12</sup> COOPER, *op. cit. supra* note 4, at 9-10, 38 n. 1.

<sup>13</sup> See Senate Comm. on Aeronautical and Space Sciences, *Legal Problems of Space Exploration*, A Symposium, S. Doc. No. 26, 87th Cong., 1st Sess. 1037-1101 (1961).

<sup>14</sup> The Soviet Union repeatedly co-sponsored and voted for U.N. General Assembly resolutions (Resolution 1721 (XVI) of 1961 and Resolution 1962 (XVIII) of 1963) to the effect that outer space is not subject to national appropriation.

<sup>15</sup> COOPER, *op. cit. supra* note 4, at 10-11 (emphasis in original). In fact, numerous types of pilotless or "drone" aircraft have been developed and used (sometimes at low altitudes) for target and other purposes. See, e.g., NATIONAL AIRSPACE EDUCATION COUNCIL, 1966 UNITED STATES AIRCRAFT, MISSILES AND SPACECRAFT 150-57 (1966).

<sup>16</sup> COOPER, *op. cit. supra* note 4, at 6, 43.

<sup>17</sup> *Id.* at 129 n. 46.

<sup>18</sup> *Id.* at 41 n. 7. Statistics of Soviet transport aviation in passenger-kilometers and cargo tonne-kilometers are published annually in the official Soviet statistical yearbook, *Narodnoye Khozyaystvo SSSR*.