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Book Reviews

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BOOK REVIEWS

SHAWCROSS AND BEAUMONT ON AIR LAW (3d ed. by Peter B. Keenan, Anthony Lester, and Peter Martin). Butterworth & Co., London, 1966. 2 V. 17 10s

The first two editions of Shawcross and Beaumont's treatise on air law (1945 and 1950) were widely used by attorneys practicing in the area of air law since the authors were scholars of high repute immersed in the practical application of law. C. N. Shawcross who was Legal Adviser to the British Overseas Airways Corporation and Major Beaumont, who was intimately involved with air law, both with CITEJA and its successor, the ICAO Legal Committee, had labored long for a revision of the Warsaw Convention. Surprisingly, the second edition of their book, published in 1950, enjoyed continued use even into the sixties because the treatise was well written and the authors were prophetic of trends. For example, their description of air traffic control liability, written in 1952 when this area presented no problem, held true in the following decade when this liability had become a serious issue.

Encouraged by the success of the first two editions, the publishers have appeared with a completely updated and revised 1966 edition, written not by Shawcross and Beaumont, but by Messrs. Keenan, Lester, and Martin (with an insignificant short chapter on space law by Mr. McMahon). Changing authors of an established treatise is a delicate matter which has repeatedly failed. The new authors of *Shawcross and Beaumont* have succeeded, although the treatise does suffer from minor mistakes which could have been easily avoided.¹

Although the treatise describes both English air law and international air law from an English point of view, non-English lawyers can certainly benefit from reading it. The large sections which discuss international law are all pertinent. The discussion of domestic English law will be immediately useful to those airlines which fly to the United Kingdom and indirectly useful for comparative law purposes. United States lawyers will find extensive reference to their case law in the discussion of tort law.

The authors' approach is to assume that the reader, knowing nothing about the subject, needs an elementary introduction. For example, the discussion of international law is initiated with a presentation of basic concepts: a definition of terms, a discussion of the distinction between do-

¹ For example, on page 77 the authors speak of the present "Air Law Institute of North Western University," although the *Journal of Air Law and Commerce* was moved from the Transportation Center at Northwestern University to Southern Methodist University in 1960; on the same page, they speak of the McGill Institute of International Air Law, although it became the Institute of Air and Space Law in 1957.

mestic and international law, and a description of the conclusion and termination of treaties. The authors then delve into special aspects of international air law. Likewise, the aviation insurance section, one of the best, begins with the basic elements of insurance before developing more complex ideas. This approach may be considered a virtue as it makes the subject matter accessible to non-lawyers.

The treatise concentrates on air carriers' liability to passengers and shippers under the Warsaw Convention.² Having adopted the Convention domestically, the United Kingdom is committed to the Warsaw Convention system of liability. United States case law is extensively included in the authors' discussion; in fact they venture a frivolous suggestion that more aircraft tort suits will be founded on *res ipsa loquitur* in the United States since accidents in the absence of negligence are thought to be fewer and fewer. Such an opinion seems to overlook the dangers of clear air turbulence, human factors such as pilots' heart attacks, and the increasing chance that another agency such as air traffic control might be the cause of the accident. In fact, a decreasing number of United States cases are won on the basis of *res ipsa loquitur*.³

Even a 736 page treatise on air law cannot be exhaustive. However, the numerous footnotes will help the reader who needs to go into depth. The index and table of cases are invaluable aids, and the publishers have made the entire second volume a loose leaf service which they intend to keep current as air law develops.

Certainly the United States has produced nothing to match the usefulness of this volume, and it is ironic that, although the United States has more aviation case law than any other country in the world, American lawyers must rely on Bin Cheng⁴ and *Shawcross and Beaumont* for their research. As a handbook on air law, the new *Shawcross and Beaumont* is to be highly recommended.

Paul B. Larsen

EVOLUTION TOWARD A SPACE TREATY, A HISTORICAL ANALYSIS, by John Michael Kemp. National Aeronautics and Space Administration, Washington, D.C., 1966, pp. 144.

On 27 January 1967, the Outer Space Treaty of 1967¹ was signed by sixty nations in Washington, London, and Moscow. The Treaty codifies, for the first time, a number of general principles considered by the contracting parties to govern the activities of man in outer space and on celestial bodies. Although the text of the Treaty was the product of negotiations held during the summer and fall of 1966 in the Legal Sub-

² Convention for the Unification of Certain Rules Relating to International Transportation by Air, (Warsaw Convention) 12 Oct. 1929, 49 Stat. 3000, T.S. 876 (1929).

³ 1 KREINDLER, AVIATION ACCIDENT LAW 135 (1963).

⁴ CHENG, THE LAW OF INTERNATIONAL AIR TRANSPORT (1962).

¹ Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies. U.N. Doc. A/C.1/L. 396 (1966).

committee of the United Nations General Assembly's Committee on the Peaceful Uses of Outer Space, agreement on the principles reflected in the text was the result of ten years of effort to achieve a consensus of views among nations. John Kemp's thesis in this historical note is that "the agreement process was not rapid, but agonizingly slow. For the last decade the process of negotiations and compromise has occurred."

Kemp's starting point in his narrative account of this evolution is the attempts made in the United Nations in 1957 by the United States to focus attention on missile and satellite development in the context of disarmament. A constant thread running through Kemp's account is the degree to which a consensus on principles which ought to govern activities in outer space was dependent upon the willingness of the Soviet Union and its supporters to separate the idea of disarmament in outer space from problems of disarmament elsewhere. That the Soviet Union was willing to agree to a treaty reserving a comparatively unexplored area for peaceful purposes is reflected in the Antarctic Treaty of 1959. The Antarctic Treaty served as an important precedent for the Outer Space Treaty, as Kemp recognizes in his last chapter which provides a useful comparison of certain provisions of the Antarctic Treaty with analogous principles of the Outer Space Treaty.

While Kemp is most helpful in outlining the important political developments leading to the Treaty and in compiling the relevant treaties and General Assembly resolutions in appendices, he has not demonstrated a thorough understanding of the complex legal issues to which much time and attention have been devoted. For example, in a section discussing the need for a treaty as compared with preexisting United Nations resolutions, Kemp states correctly that a General Assembly resolution does not have the binding character of a Treaty, but adds that "no serious commentator contends that the resolutions are law," without recognizing that a General Assembly resolution is a form of law, albeit less binding than a treaty. Kemp also has difficulty in summarizing the discussions of the Legal Subcommittee of the Committee on the Peaceful Uses of Outer Space on assistance and return of astronauts and space vehicles, and on liability for damages caused by launchings of space objects. These are complex legal subjects not susceptible to meaningful treatment in summary fashion.

Kemp's chronological narrative ends prior to the agreement by the delegations to the Outer Space Legal Subcommittee on the final text of the Outer Space Treaty. However, the reader is taken through the summer 1966 meeting of the Legal Subcommittee in Geneva at which agreement on almost all of the important matters was reached. In any event, the usefulness of Kemp's discussion lies in his tracing of the broad historical developments leading up to the 1967 initiatives by the Soviet Union and the United States. This United States-Soviet meeting of the minds on the urgent need for a treaty provided a catalyst to achieving agreement on the Treaty text. But Kemp's thesis, that the agreement process was "agonizingly slow," is essentially correct in that the treaty would probably still be evolving were it not for the groundwork laid over a period of ten years.

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