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## Book Reviews

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## BOOK REVIEWS

RECHTSFRAGEN DER ICAO, DIE INTERNATIONALE ZIVILLUFTFAHRTORGANISATION UND IHRE MITGLIEDSTAATEN, by Jáchén Erler. Carl Heymanns Verlag KG, Cologne, 1967, pp. 223. DM 18.50

The International Civil Aviation Organization (ICAO), because of its nearly twenty-five years in aviation regulation, its almost world-wide participation (major exceptions are USSR and People's Republic of China), and its organizational peculiarities, has long deserved a book-length analysis.

Dr. Erler's book begins, suitably, with an explanation of how ICAO emerged from the 1944 Chicago Convention, and the ways in which it later developed. Next, the special international status and privileges of the organization are considered. In the third and, to this reviewer the most interesting, part, Dr. Erler describes how ICAO is used to provide technical regulation of aviation. Finally, there is a study of ICAO's special assistance programs, and the Organization's role in settling aviation disputes. The book is first of all an overview, and secondarily an analysis, of the Organization.

A comparison of ICAO with other world organizations yields intriguing information, and it is apparent that this aspect has Erler's interest. For example, the ICAO Council has extensive legislative, executive and judicial duties, and like the U.N. Security Council is a permanent body; but the ICAO Council overshadows both the ICAO Assembly and the ICAO Secretary General. This dissimilarity to the U.N. is partly caused by the fact that the Chicago Convention predates and differs from the U.N. Charter. The ICAO Council, which originally contained twenty-one members, and was increased to twenty-seven in 1961, has no veto power. Responsibility for ICAO is vested in the Council. An Assembly does exist, but it only meets every third year to approve the ICAO three year budget and to establish some basic policy outlines for the Organization. One reason for the Council's preeminence is its prestigious head, the ICAO Council President. He is a permanent employee who is elected by the Council every third year, and is the most important figure in the Organization. This has developed partly through practice, and partly because a special position was given him by the Chicago Convention. Curiously, the Chicago Convention in Article 54 mentions the ICAO Secretary General as being chief executive officer. Erler calls this a misnomer. A contributory cause to this status in power is that although there have been several Secretary Generals, ICAO has had only two Council Presidents, Edward Warner and Walter Binaghi, both strong personalities. The office of the Secretary General is secondary to that of the President, and closer to that of a top civil servant who is responsible for the internal operation of the Organization. This

situation contrasts sharply to the United Nations organization.

The independence of the international civil servants from national pressures is well described by Erler. It would have been interesting to know more about developed ICAO practice. For instance, the USSR is in the habit of limiting its nationals to short terms of employment with the United Nations, which tends to make them dependent on their own government. There are other ways in which national pressure can be brought to bear on the international civil servants, and there would be political science value in knowing if they exist in ICAO.

Initially in the third part, Erler describes how the Chicago Convention has several times been amended in order to better meet the practical needs of the organization. This brings into issue a dilemma concerning all of the international organizations which have close to universal membership. It is difficult to get all the parties to an enabling treaty to accept changes. In ICAO's experience, there was quick general acceptance of the 1961 amendment to enlarge the Council, but other amendments have had less success. Some Member States are tardy, and some never give notice of acceptance of a change. Article 36 of the International Law Commission's Draft Articles on the Law of Treaties states that, "[t]he amending agreement does not bind any state already a party to the treaty which does not become a party to the amending agreement"; the earlier agreement governs that state's treaty relationships. Erler does not provide an answer to the question of whether states which fail to accept the amendment to enlarge the ICAO Council may vote for the extra seats, or may compete for them; however, he properly intimates that this is a potentially troublesome issue for ICAO.

The Chicago Convention gives ICAO the important function of establishing uniform international aviation standards. The fifteen Annexes to the Convention are constantly updated, and other regulation methods are also used. Air safety is a major objective, but it is a difficult matter for ICAO to establish uniform rules which will eliminate the kind of collisions between air carriers and general aviation which is today the concern of the Federal Aviation Administration. In this interesting chapter Erler describes ICAO's authority and practice in providing minimum aviation regulation, and the obstacles to establishing uniformity. No doubt ICAO could be used more efficiently if the States would allow that.

Dr. Erler cautiously states that the legality or illegality, under international law, of ADIZ and CADIZ (the United States and Canadian air defense zones over the high seas) is beyond the scope of his book. Nevertheless he falls for the boy's trick of kicking the hat that is mischievously left on the street concealing a stone. He summarily calls ADIZ and CADIZ illegal and in violation of the Chicago Convention, and an exercise of sovereignty outside of sovereign territory. He supports this by listing four authorities who consider them illegal, but follows with a list of six good authorities who consider them legal. This subject *is* outside the scope of the book.

Last are ICAO's judicial and other dispute-settling functions. It is curious that a political body, the ICAO Council, has been given such extensive judicial functions in the Chicago Convention. Under Article 84 of the Chicago Convention, any one state concerned with a disagreement between contracting states regarding the Convention or its Annexes may ask the Council to decide the dispute; the only restriction is that the Council Members who are parties to the disagreement may not vote. The Convention provides specific enforcement measures; no contracting States may allow entry of airlines from states which fail to observe the decision of the Council. Several bilateral air transport agreements give the ICAO Council President the function of naming an arbitrator if the disagreeing states cannot agree in the nomination. Because of the political nature of the council, it is understandable that its dispute-settling role has seen little use. It would have been pertinent to mention the one time that the ICAO council president played a part in naming an arbitrator.<sup>1</sup>

Dr. Erler is perhaps a little too happy with ICAO's performance, which has not been perfect. The imperfection rather than being the fault of the Organization is the fault of the Member States, which have sometimes failed to use it in the best way. One recent important event in air transport which could have been accomplished within the framework of ICAO was the *de facto* change in the Warsaw Convention. The ICAO Legal Committee is charged with the duty to develop and draft new international treaties on aviation. The system of the 1929 Warsaw Convention on air carriers' liability became out of date; however, no agreement to change the Convention could be made within the ICAO Legal Committee, and the United States finally gave notice to denounce it. The structure of the Convention was subsequently changed outside of ICAO by direct negotiation between the United States and the airlines in 1966, and the notice of denunciation was withdrawn. At the time of the writing of this review, the ICAO Legal Committee is engaged in discussion which may lead to needed revisions in the Warsaw Convention.

No person who is interested in international organizations or in international aviation should neglect to notice this book. It fills a definite need in the literature. It is not exhaustive, because the wealth of material overwhelms as ICAO becomes older. Since air transport is vital and quickly growing, it is to be hoped that this book will be followed by others in the same area. They will find Dr. Erler's book a useful reference work, with frequent mention of ICAO Documentation and pertinent literature. The German language is no great barrier to the information. It is not the usual heavy legalese, so difficult for the foreign reader to penetrate, and technical words are repeated in English. I recommend it.

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<sup>1</sup> Decision of the Arbitration Tribunal Established Pursuant to the Arbitration Agreement Signed at Paris on January 22, 1963 between the United States and France, *International Legal Materials*, July 1964, p. 668.

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NON-PROLIFERATION TREATY: FRAMEWORK FOR NUCLEAR ARMS CONTROL, by Mason Willrich. The Michie Company, Law Publishers, Charlottesville, Virginia, 1969, pp. 341. \$7.50

The main purpose of this interesting monograph is to establish by analysis the real meaning of the Treaty on the Non-Proliferation of Nuclear Weapons, signed in Moscow on July 1, 1968 (see Appendix A). In addition, it explores its practical potentialities, *i.e.*, its political, legal and military implications. In order to do so the author discusses in the first chapter the technological framework of nuclear capabilities of the different nations, within their eventual strategic and political significance. The full understanding of this technical panorama may be successfully achieved by the reading of Appendix E concerning the International Atomic Energy Safeguards System. Further, chapter II contains a detailed analysis of the different alternatives (general, selective, selective non-proliferation and general non-proliferation) for preventing the spread of nuclear weapons to non-nuclear powers.

Chapter III consists of the presentation of the legal background for nuclear arms control such as the West German self-control pledge, the Antarctic Treaty, the Limited Nuclear Test Ban Treaty, the Treaty for the Prohibition of Nuclear Weapons in Latin America, the Outer Space Treaty, EURATOM, the International Atomic Energy Agency to control peaceful uses of nuclear energy, and the Resolution (called "Irish" Resolution) of the United Nations of December 4, 1961, along with further developments, such as the Discussions in the 18 Nations Disarmament Committee in Geneva, the NATO Council in Bruxelles and the UN General Assembly in New York.

The analysis of the main issues involved in the text of the Treaty is the subject of four chapters (IV to VII). First of all, the problem of non-transfer and of non-acquisition of nuclear weapons is faced in chapter IV where the author gives us, upon the basis of the "legal" text, the concepts of "nuclear weapons" (limiting the term of the warhead or bomb), "other nuclear explosive devices" (nuclear explosives of potential use in peaceful applications), "control" (a right or ability to fire nuclear weapons without the concurrent decision of an existing nuclear-weapons state) and the like.

Chapter V is related to the problem of safeguards on peaceful nuclear activities of non-nuclear-weapons states. It includes considerations such as the reach of an international inspection requirement, safeguards on activities within non-nuclear-weapons states, the EURATOM and IAEA relationship, safeguards on international nuclear transactions, and so on. The cooperation and assistance granted or to be granted is the subject matter of chapter VI and, finally, in chapter VII the author analyzes the durability of the Treaty and the ways states can share the benefits of peaceful use of nuclear explosions as well as the application of principles involved in the Treaty, such as future nuclear arms limitations by the nuclear-weapons states and the assurances from the nuclear-weapons states of their support

in the case of a supposed nuclear aggression against a non-nuclear-weapons state party to the Treaty.

The mere list of the problems mentioned proves and justifies the insertion of the last chapter bearing the impressive title "Future Implications". In pages 177 to 186 Professor Willrich establishes a general eventual panorama for the future, having in mind the contents of the first three introductory chapters. Even if it is true that in this field we are working only in the realm of conjecture, however the author proves himself to be an excellent improviser of situations insofar as he unites, as he does throughout the whole book, the theoretical explanations of both a law professor and a political scientist as well as the experience and practice acquired during his several years of participation in practical discussions within international commission and national—United States—delegations to international meetings.

Such a spirit and practical richness has given us a most instructive and interesting book, the reading of which is, indeed, highly recommendable to professionals, international lawyers, students in political science and government, as well as any civic group that has something to do with policy making or policy execution in nuclear matters.

A word of praise should be said about the plain printing of the book and its presentation; however, it is this writer's deep conviction, expressed on many other occasions, that the footnotes would accomplish their important role one hundred per cent more effectively were they put on each page instead of being grouped at the end of the whole text, particularly if those notes are, as they are, explanatory in nature. On the other hand, only on pages 201 and 207 have there been two non-important printing errors discovered which consist of interchanging the lines of text in those two occasions.

The technical Bibliography and Index accompanying the text make this work even more valuable.

*J. J. Santa-Pinter\**

AEROSPACE LAW, by Nicolas Mateesco Matte. The Carswell Company Limited, Toronto, Canada, 1969, pp. 501. \$12.50

Some form of international—or interstellar—law is now upon us. Whether the Apollo 11 moon landing, the various manned flights in space, the U.S. and Russian deep space probes or merely the nearer-orbiting communications satellites be considered the factor that has brought the necessity to the fore, it is abundantly clear that ordered control is needed. In his book, Professor Matte, currently professor of Air and Space Law at the University of Montreal, traces what has been accomplished in man's attempt to reach agreement on space. In fact, Professor Matte goes beyond

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\* University of Puerto Rico.

the "law of space" and discusses various treaties, conventions and United Nation's resolutions on disarmament, the Antarctic and nuclear control. As such, the book is the more valuable, but misleadingly titled—rather it should more appropriately be entitled "International Agreements and Problems in the Nuclear and Space Age".

The early pages are devoted to a fascinating discussion of the legal status of space and the attendant problems of definition, sovereignty and control. The author then turns to the uses of space vehicles, an enumeration and description of non-governmental and governmental organizations devoted to various aspects of space (communications, weather, and so forth) and to matters of nuclear control. The reader thus is presented with a summary, history, outline and short commentary on such subjects as space, telecommunications (COMSAT and INTELSAT), Non-proliferation of Nuclear Arms, Peaceful Uses of Outer Space and the Agreement on Rescue and Return of Astronauts, and Return of Objects Launched into Outer Space. It is here that we are led back to the problem of a "dividing line" between "air law" and "space law" and the author concludes that such a division is both artificial and temporary. He also sees the need to proceed with all due dispatch to real agreement and control of outer space and extra-terrestrial bodies.

Professor Matte has collected, researched and set forth (with comment) the more important conventions, treaties and international agreements of our time in the nuclear and space fields. In this respect, the book is a survey course in itself, complete with the texts of the treaties and resolutions set forth in an appendix. And again it should be emphasized that the coverage is far broader than just aerospace law.

On the plus side, one would have to note the completeness of the author's survey of the field and his incisive analytic commentary on the conventions and treaties already entered into—he finds the Outer Space Treaty "ambiguous, elliptical, and sometimes even contradictory"—as well as the problems yet to be faced. In addition, his discussion of various international organizations (both regional and world-wide) in the space and nuclear fields, provides an excellent organizational who's who. The list of acronyms in the front of the book is a life saver—the international community appears neck and neck with Washington in the alphabet race.

On the other side of the coin, your reviewer found the cross-referencing extremely involved. Rather than cross-referencing by page, it is by "point number" which requires reference to the Table of Contents (at the *back* of the book) to determine a page reference for the "points" which are serially numbered therein. The book contains a few apparent technical errors, but these are of minor importance since it clearly was not intended as a scientific text. The only discordant note is raised by a section entitled "Quebec, main link of cooperation between France and Canada." Although quite neatly maintaining a neutral balance in his commentary on U.S. and Russian space achievements and diplomatic maneuvering—both nations are praised and chided at appropriate places—Professor Matte has thus seen

fit to inject a political note into his work. The section is completely unnecessary to the development of the book and its inclusion is indeed unfortunate since—at least in the mind of your reviewer—it tended to color certain of the author's comments at other portions.

In summary, Professor Matte is to be congratulated for a broad gauge covering of current developments in the international law aspects of the nuclear and space age. As he himself says in his introduction:

We hope that this presentation, which does not claim to be complete or up-to-date—and how could it be, in view of the very rapid pace of technical developments which multiply the possibilities of peaceful uses of space—will, nevertheless, help to a better understanding of the formation of this new law which cannot be grasped or put together with precision, either as to its rhythm or the manner of its taking form, or as to the mentality with which the rules of international law have been understood to date.

Thus, Professor Matte has not sought to provide answers, rather he has set forth the problems and exhorts the Bar of all nations to attack these problems for the good of mankind.

*Robert Reed Gray*