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Post-War International Civil Aviation Policy and the Law of the Air

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BOOK REVIEW

POST-WAR INTERNATIONAL CIVIL AVIATION POLICY AND THE LAW OF THE AIR. By H. A. Wassenbergh. Published by Martinus Nijhoff, The Hague, 1957, pp. 180.

This book, dedicated to the memory of Dr. Albert Plesman, expresses and upholds principles which might be considered as strictly traditional Dutch principles in regard to international transportation generally. Mr. Wassenbergh's material, which falls within the realm of international public law, is divided into two parts: Part I, containing five chapters, deals with Post-War International Civil Aviation policy, and Part II, containing the same number of chapters, deals with The Law of the Air.

In his foreword, dated December 31st, 1956, the author states that the factors governing the development of civil aviation are not widely known. This applies, he says, not so much to technical development as to the political and economic considerations which ultimately determine the pattern of the worldwide network of air routes. Indeed from his analysis, one readily concludes that no form of activity reflects more accurately the relationship between States than the civil aviation policy carried out between them.

In the first part of the book, the author traces a somewhat sombre trend which development in civil aviation has taken since the Chicago Conference in 1944, using as a basis for his arguments the interpretation which has been given to certain Articles in the Chicago Convention affecting his subject. For the benefit of the reader, the author has reproduced at the end of his work, these particular Articles, together with the Preamble to the Convention at which it might be salutary for States' Authorities to glance more often.

Mr. Wassenbergh refreshes the reader's mind by returning to the discussions at Chicago. He has occasion to review the various proposals outlined there for regulating civil aviation: the proposition put forward by the Australian/New Zealand representatives for an internationally owning air transport company or corporation to operate the international trunk routes; by the Canadian and U.K. representatives for an authority which, while not owning the machines and equipment, would be an authority with sufficient "teeth" to control such aspects as fares, rates, capacity, frequencies, etc.; and the U.S. proposal which required nothing more than something in the nature of an advisory authority.

A good deal of discussion goes into the interpretation which has been given to Articles 5 and 6 of the Chicago Convention, and to the endeavor on the part of the International Civil Aviation Organization to produce some kind of multilateral agreement on commercial rights which would be sufficiently attractive for Contracting States to the Chicago Convention to sign. No such agreement having been found, the author discusses the position which has evolved as a result of the bilateral agreements existing between countries. A portion of one chapter is devoted to the Bermuda Agreement, that face-saving agreement which emerged as a result of the meeting between the U.S. and U.K. representatives in 1946 and which was to set the pattern, with variations of one kind and another, for some years to come for bilateral agreements between States.

Mr. Wassenbergh brings his readers up to date on the integrating trend in Europe, commencing with the Bonnefous and Sforza Plans, about 1951, and leading up to the ICAO sponsored meeting in 1954 on the possibility of greater co-ordination in air transport in Europe. This, in turn, was followed by the European Civil Aviation Conference in 1955. Trends towards co-ordi-

nation which had seemed marked in 1954, were less marked in 1955. The author rightly concludes that co-ordination and integration demand a willingness on the part both of airlines and governments to work towards this end. In other words, the airlines must show a willingness to cooperate more fully with one another and the appropriate governments must be ready, in their turn, to help remove the restrictions.

In his Part II, the author deals first with what he calls international legal norms with respect to civil aviation: Sovereignty in Airspace; that "will o' the wisp," the Right of Innocent Passage; the Right to Air Transportation; the Right to Exploit the Aerial Highway; the Norms with respect to Non-scheduled Air Transportation; and the Norms with respect to the Various Kinds of Traffic. The conflict on the part of States between, on the one hand, the national interest and, on the other, their international obligations is stressed throughout the book.

Part II contains some rather long involved sentences, often requiring a great deal of concentration on the part of the reader. This second part of the book, in which the reader moves in rather a rarefied atmosphere, concludes with the author's views regarding future trends and his analysis of the position in his own country, the Netherlands. The book contains a useful index, a list of abbreviations and the footnotes are more than adequate.

Mr. Wassenbergh's chapters are prefaced and inspired by quotations on civil aviation from politicians and philosophers alike. It would seem from the author's analysis that time must still elapse before the wisdom dispensed by these men is to be appreciated and before the barriers in the way of a more natural development in civil aviation come down.

SHEILA F. MACBRAYNE