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Introduction

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John Cobb Cooper Commemorative Essays

INTRODUCTION

By P. K. ROY†

THE articles which follow have been written in honour of Professor John Cobb Cooper on the occasion of his seventy-fifth birthday on September 18, 1962.

The name of John Cobb Cooper is known to air lawyers throughout the world; most of them have read his writings and have thereby greatly profited. Some of these readers are his confrères of old, as members of CITEJA,¹ and many were associated with him at the international conferences on air law or other aviation meetings which he attended as a Member or Chairman of the Delegation of the United States of America, or as representative of the International Air Transport Association.

Professor Cooper's devotion to research and historical scholarship gave the air lawyer everywhere the book "The Right to Fly," and to his countrymen in particular the book "Sources of our Liberties," which deals with the legal sources of individual liberties of the American citizen. His historical scholarship has served to remind us that the rule of State sovereignty over territorial airspace is not—as is stated sometimes—a conventional stipulation, appertaining only to the parties to the Chicago Convention of 1944 or even the Paris Convention of 1919, but has been, for at least half a century, a part of customary international law: "Thus it is apparent that by the outbreak of World War I the principle of sovereignty in usable space over national lands and waters had been accepted by the international community as a customary rule."²

To John Cobb Cooper the world of civil aviation is indebted for his outstanding work as Chairman of the Drafting Committees at the Chicago Conference in 1944; and unless I am mistaken, it was his pen which wrote into the Convention on International Civil Aviation there formulated the part of Article 12 which states: "Over the high seas, the rules in force shall be those established under this convention." By this single sentence there was constituted an international legislative authority for the making of rules relating to flight and manoeuvre of aircraft in the air space above the high seas.

Remarkable as are his qualities as lawyer, scholar and law teacher, perhaps Professor Cooper's foremost characteristics are his foresight and pioneering spirit, which have made him one of the outstanding leaders in the new field of space law. Almost nine years before the first Sputnik, in the lecture "International Air Law" delivered at the United States Naval War College on December 20, 1948, he made the remarkable, prophetic observation: "In view of the fact that some of my scientific friends are convinced that rockets or other guided missiles may be propelled from

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¹ Comité international technique d'experts juridiques aériens.

² *State Sovereignty in Space: Developments 1910 to 1914*, 32 *Beiträge Zum Internationalen Luftrecht* (1954).

the earth to the moon within a comparatively few years, the problem presents curious political and geographic difficulties," the problem in question being "to what height above the surface of the earth can the sovereignty of a State be extended."

It is only fitting that the far-reaching influence of Professor John Cobb Cooper throughout the world be acknowledged through papers written especially to commemorate his seventy-fifth birthday. The happy thought of thus paying homage to the Dean of American air lawyers was born at Washington, D. C., some months ago at my meeting with the German Dean of air lawyers, Professor Dr. Alex Meyer, whose own seventy-fifth birthday was celebrated similarly with a *Festschrift* in 1954. Following consultations with other friends also, I gladly undertook the function of soliciting and collecting these writings. There was no danger of a lack of articles for the friends and admirers of Professor Cooper are legion: they range from those who were his students at the Institute of International Air Law, McGill University, to others not as young. However, invitations had to be limited. If a large number of articles were requested, they might all in fact be received! And that could have proved embarrassing, for the means of financing the project were yet to be decided upon. So, Dean J. W. Riehm was approached with the suggestion that the problem of financing would be solved if the articles could be included in an issue of the Journal of Air Law and Commerce, with which Professor Cooper has been so closely associated. The response was ready and generous. Accordingly, the articles appear in the present issue of the Journal. It may be added that the Journal exercised no authority over the choice of subject matter of these articles or, save for editorial re-touching in a few cases, their treatment, such questions being left to the entire discretion of the writers.

The authors of the articles deserve our best thanks for having written them; and we are greatly indebted to the Journal, and particularly to Dean Riehm, for the benevolent role the Journal has played in publishing the articles.

Professor Cooper's interests and work have covered many fields, so do the articles here collected. We have the article "Exemption Clauses Governing Loss or Damage Resulting from the Inherent Defect, Quality or Vice of the Cargo," by Professor Cooper's former student, Mr. H. Drion, now himself a professor of eminence at Leiden University (Netherlands); and also the article on "Legal Problems of Outer Space," by that authority in the field of space law, Professor Dr. Alex Meyer, now in his eighty-third year.

It was thought fitting that there should be an article from Montreal, for this is where Professor Cooper spent many years and where two of the institutions in the foundation of which he played a foremost role are located, the International Air Transport Association and the Institute of Air and Space Law, McGill University. Hence, we have the article "John Cobb Cooper and McGill's Institute of Air and Space Law," from Professor A. B. Rosevear, Q.C., a successor of Professor Cooper as Director of the Institute. As a geographical counter-balance to northerly Montreal, we have, from one of the southernmost countries on the globe, Argentina, the article of Dr. A. A. Cocca: "Contributions of Space and Interplanetary Law to Juridical Science." From Mexico City, where Professor Cooper