

1978

Book Reviews

Recommended Citation

Book Reviews, 12 INT'L L. 493 (1978)

<https://scholar.smu.edu/til/vol12/iss2/21>

This Bibliography is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in International Lawyer by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Book Reviews

Studies in Space Law: Its Challenges and Prospects

Stephen Gorove; A. W. Sijthoff, Leyden, The Netherlands; 1977; 228 pp.

Reviewed by CARL Q. CHRISTOL

In this varied and versatile book, Dr. Gorove, who is Professor of Law and Chairman of the Graduate Program of the School of Law at the University of Mississippi, brings together the product of his innovative thinking on outer space legal issues. In twenty-two chapters, consisting in large part of articles previously published in American journals dating from 1958 to the present, the author has analyzed the coming to fruition of a critically important addition to general international law, namely, the international law of the space environment. This environment consists of outer space, the Moon, and other celestial bodies.

The author has concentrated his attention on the major international agreements produced at the United Nations that seek to establish both general principles and more specific rules for the governance of man's activities in space. He has examined in a searching fashion the several proposals that still await final form at the UN, such as the Draft Treaty Relating to the Moon, Direct Television Broadcasting by Satellite, Remote Sensing, and Legal Boundaries between Airspace and Outer Space. A major approach employed by the author has been the assessment of the meaning to be assigned to specific words and phrases in existing agreements and proposed drafts. His effort has been to obtain clarity from an examination of the literal meaning of such words and phrases. Focusing on such an approach, he frequently identifies interpretational difficulties, and in so doing implicitly calls attention to the need to refer to all of the criteria of treaty interpretation in order to obtain a suitable meaning of such agreements.

The importance of having clarity in treaty terms is particularly important when an agreement purports to impose limitations on the presence of nuclear weapons and weapons of mass destruction in the space environment. Professor Gorove, in examining Article IV of the very generally accepted 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and other Celestial Bodies, refers to the fact that it prohibits the installation of such weapons "on celestial bodies" as well as the stationing of such weapons "in outer space in any other manner." He notes that in other parts of the Treaty there is a fairly consistent linking of the Moon and celestial bodies in operative clauses. Dealing with Article IV he observes: "It is by no means clear, however, whether the omission of the word 'moon' was intentional, or if the implication is correct that no restriction is placed on the installation of atomic weapons on the moon. One may surmise, however, from the frequently used phrase 'moon and other celestial bodies' that the moon is to be regarded as a celestial body under the Treaty. Moreover, it would make little sense to permit installation of weapons of mass destruction on the moon while prohibiting such installation on other celestial bodies, when men's use of the latter looms in the more distant future." (p. 87). It is submitted that these observations are relevant to the meaning to be given to Article IV and that such considerations provide guidance in the construction of the literal meaning of given treaty terms. In his search for clarity Professor Gorove asks many perceptive questions and thereby constantly challenges the drafters of such agreements to do an even better drafting job in the future than in the past.

His chapter dealing with the application of the Common Heritage of Mankind concept was written in 1972. At that time Professor Gorove concluded that this concept had not attained a significant legal meaning. However, it should be noted that from 1958 to the present all space law negotiations have been built around the view that the space environment should be used for the benefit and betterment of mankind, that the 1967 Principles Treaty identified the space environment as "the province of all mankind," and that the several drafts of the Moon Treaty which were put forward following Professor Gorove's article do state that the natural resources of the Moon, and alternatively, the Moon as well as its natural resources, are the Common Heritage of Mankind. Thus, there has been an increasing willingness on the part of some experts in the field to assign rather important legal consequences to this concept.

Professor Gorove also has contributed significantly to the effort to obtain clarification of legal rights relating to resources situated on the Moon and other celestial bodies. He has urged that the draft Moon Treaty distinguish between possession and control over resources, including their exploration and exploitation, and a right of ownership over parts of the Moon's surface and

subsurface. The distinction is between exclusive and inclusive uses.

The publication of this book should make all who are concerned with the evolution of legal concepts fully aware of how far international space law has come since Sputnik first ascended in 1957.

The Path Between the Seas — The Creation of the Panama Canal: 1870-1914

David McCullough; Simon and Schuster, New York. 1977.
pp. 698. Index. \$14.95.

Reviewed by ALWYN V. FREEMAN

The tone and style of this distinguished work by the author of *The Great Bridge* and *The Johnstown Flood* could not be evoked more aptly by this reviewer than with the following selection from the book's preface:

The creation of the Panama Canal was far more than a vast, unprecedented feat of engineering. It was a profoundly important historic event and a sweeping human drama not unlike that of war. Apart from wars, it represented the largest, most costly single effort ever before mounted anywhere on earth. . . .

Because of it one nation, France, was rocked to its foundations. Another, Colombia, lost its most prized possession, the Isthmus of Panama. Nicaragua, on the verge of becoming a world crossroads, was left to wait for some future chance. The Republic of Panama was born. The United States was embarked on a role of global involvement.

This is enough to hook the reader. The story then unfolds with a contemporaneous surge which makes the entire majestic crusade come alive. A happy marriage of historical fact and narrative skill transfigures the reader into spectator.

There has been a widespread tendency among certain media spokesmen to disparage this episode in United States history as imperialist colonialism at its worst, and to urge our absolution — if not immolation — for so heinous an offense by relinquishing all control over one of the world's great water systems. If McCullough's book does nothing else, it should dilute any such contrived feelings of guilt in the American psyche towards Panama. For the truth is, as this brilliant chronicle attests, that the building of the Canal was

one of mankind's more glorious achievements on this planet. To be sure, as the minions of guilt are wont to complain, the United States played a significant role, though primarily by the exertion of restricting pressures, in dissolving the bonds between the Panamanians and Colombia. The familiar tale of Bunau-Varilla's minor league Machiavellianisms and American support for the revolution against Colombia — which could not have succeeded without our naval presence offshore — represented, perhaps, a typical nineteenth century gunboat pressure upon a small country. But, at its worst, it was not Panama which was sinned against, but Colombia, the real victim.

On the other hand, it must be remembered that the United States did not instigate the revolutionary movement in Panama. Several prior uprisings which had taken place were methodically suppressed by Colombia — from the sea. Panama, a minor state of Colombia, was geographically isolated from the rest of the nation, separated by hostile terrain and mountains, accessible to the central government by the seas. From that standpoint, if one were to view it in today's frame of reference, our Panamanian intercession could be regarded as a somewhat precocious support for that self-determination which our Third World friends are constantly beating to death in the portals of the United Nations.

McCullough serves up numerous surprise goodies that will enthrall his readers. As a young man of thirty-one, Theodore Roosevelt had read one of the first copies of Alfred Mahan's *The Influence of Sea Power upon History*, which appeared in 1890; and his determination to have a canal dates from that time. It was galvanized further by the race of the U.S.S. *Oregon* around the Horn, to participate in the battle of Santiago Bay, and even more conclusively by our acquisition of the Philippines. In subsequent discussions with the British over the Hay-Pauncefote Treaty, Roosevelt warned that if the canal were open to the warships of an enemy, "it is a menace to us in time of war . . . an added burden, an additional strategic point to be guarded by our fleet. If fortified by us, it becomes one of the most potent sources of our possible sea strength." Curiously, all during this period, Roosevelt's speeches never even referred to Panama. Like almost everyone else, he had been acting on the assumption that the canal would be built in Nicaragua.

In most accounts of America's success in this project, the two achievements usually lauded are the conquest of yellow fever and the Herculean engineering-construction job. It comes, then, as a surprise to learn that even before De Lesseps undertook what was then described as "la grande entreprise," a little-known French engineering genius, Baron Godin de Lépinay, had presented a highly original — and sound — answer to the Panama problem. The plan was the product of his experience in building a railroad between Córdoba and Veracruz in 1862, during which a third of his labor force and two-thirds of his engineering staff died of yellow fever. His solution, what Bunau-Varilla

described as an "artificial Nicaragua," was bewilderingly ignored by the delegates to the *Congrès International d'Études du Canal Interocéanique* in 1879, who refused even to discuss it. None there could oppose the prestige or the success of the man who had built Suez; and all of De Lesseps' technical inadequacies, the blind spots and the headstrong stubbornness, combined to doom an approach that was conceptually wrong at the outset. McCullough's analysis of this tragic figure and his expedition is masterful in its taut conciseness and minimal extraneous embroidery.

Then follows a fascinating story of the takeover by the United States, the internal disputes which preceded and accompanied it, the designation and decline of John Stevens (who, despite his later collapse, really got the project off in the right direction, and whose role in the canal appears not to have been adequately appreciated previously); his replacement by General Goethals, and the critical performance of Dr. William Gorgas (who had been chiefly responsible for eradicating a yellow fever plague in Havana in 1901) with his successful attack on malaria and yellow fever, without which the whole project might have come to naught.

It may also surprise many who think of the Canal as the sole and personal creation of Theodore Roosevelt, to learn that the Canal was built under three presidents — Roosevelt, Taft and Wilson; and of these three, Taft was the one who expended the most effort and personal attention on the project. Nonetheless, McCullough properly emphasizes that the crucial decisions, the Hay-Pauncefote Treaty, the choice of route through Panama and the creation of an independent Panama — all the elements that were decisive — were Roosevelt's.

In his research, McCullough had access, at the Library of Congress and the National Archives, to the voluminous personal papers of the moving figures in this spectacle; to Goethals' own two-volume treatise; and to hundreds of primary and secondary source materials, to say nothing of the dozens of personal interviews with relatives and descendants of the principal characters here and abroad. At a time when the eyes of the American people are on their representatives in Washington during debates on the new Panama Canal Treaties, this book supplies a mine of background information indispensable to a solid understanding of the ramifications of this delicate issue. It should rightly take its place as the definitive study on the subject.

