Journal of Air Law and Commerce

Volume 2 | Issue 1 Article 2

1931

The Seadrome and International Law

Rowland W. Fixel

THE SEADROME AND INTERNATIONAL LAW*

ROWLAND W. FIXEL†

The formulation of rules and regulations regarding international aerial navigation has been successfully accomplished through the International Convention for the Regulation of Aviation. However, while there has been thus promulgated and adopted a uniform plan for air navigation in international flight and descent on land, no standards for the regulation of seadromes have as yet been suggested.

The seadrome, as its name implies, is an anchored float or dock; a landing platform on the high seas, whose chief and fundamental purpose will be to facilitate the landing, taking off and servicing of aircraft on the ocean or high seas. Extensive technical and engineering plans have been so far advanced that it is within the realm of probability that seadromes will shortly come into practical use. A seadrome will be similar to any emergency landing field in its purpose although its equipment will include every facility for the successful carrying on of transoceanic aerial navigation. The usefulness of an aid to such aerial flights is not to be disputed; and if successfully installed and operated in sufficient quantity, may solve the vexatious problems now confronting ocean fliers such as unexpected storms, failure of gas, lack of meteorological information, and lack of emergency landing spots.

From the legal standpoint, the seadrome creates new problems in international law. These arise from the fact that the high seas belong to no one. They are universally recognized as open highways free for use by any nation at all times for peaceful purposes. Furthermore, it is likewise recognized that no nation has the right to exercise domain or jurisdiction over any part of the high seas. A state's territory at present extends a mariner's league (3 miles) or a cannon shot over the waters adjacent to its shores.[1] Beyond the mariner's zone is the common highway of nations, and such highway is not subject to exclusive appropriation.

---

*A paper presented at the College of the City of Detroit, Detroit, Michigan, November 25, 1930.

†Of the Detroit Bar; Major, J. A. G. D., Res.

1. The Ann. Fed. Cas. 397; *The Grace & Ruby*, 283 Fed. 475.

Justice Story[2] approved this doctrine of international law by saying that the high seas belong to all, and are for the use of all, and cannot be appropriated by or exclusively used by one as opposed to another. Eminent writers on international law have concluded that if such appropriation would take place, it would be an act of aggression because it would infringe the common right of all others. That such assertion of a right of appropriation would give rise to a right on the part of the others to combine and resist by force, the asserted claim to a right to appropriate any such portion of the high seas.[3] Indeed, it has been stated by Chancellor Kent,[4] one of America's greatest and most noted students of international law, that the open sea is not capable of being possessed as private property. He further said that "no nation has any right of jurisdiction at sea, except if it be over the persons of its own subjects in its own public and private vessels." Likewise it has been held[5] that even though a portion of the high seas be occupied, such occupancy does not give to the nation the absolute empire therein because the seas are not susceptible of individual appropriation.

In times gone by, there have been several efforts by nations to exert sovereignty over certain of the high seas. In the 16th century, Spain asserted the right to exclude all others from the Pacific Ocean. The Portuguese and the Spaniards endeavored by means of a grant under Pope Alexander VI to claim exclusive rights in the Atlantic Ocean, west and south of a designated line. The English in the 17th century likewise sought to establish exclusive rights of navigation over the seas surrounding Great Britain. Germany in 1917 attempted the same thing by declaring unrestricted submarine warfare in certain zones on the high seas in and about Great Britain. After each such assumption of power, domain or sovereignty, a storm of protest arose and in the case of Germany, her declaration resulted in drawing the United States into the World War. It is safe to assert that notwithstanding such claims as have heretofore been made to exclusive jurisdiction over the ocean or any part theref, it is now the universally accepted doctrine that no nation may claim "jurisdiction over the ocean which will exclude an equal jurisdiction by every other nation."[6]

2. *The Marianna Flora*, 11 Wheat (U. S.) 1, 6 L. Ed. 405.
3. *Vattel*, Book 1, Chap. 23, Sec. 281.
4. Part 1, Lecture 2.
5. *Azuni*, Part 1, Chap. 1, Par. 12.
6. 15 R. C. L. 125.

The law of nations, commonly called international law, is a standard of conduct adopted by nations in their intercourse with others whether in peace or war. It rests on the basis of morality and justice, just the same as private law rests on the same sanction. And no nation can successfully oppose itself to the common accepted standards of right and justice, without subjecting itself to ostracism and perhaps coercion. The present vast commercial and personal intercourse between nation and nation necessarily brings about a solidarity of public opinion, a common perspective and purpose which in our day has strengthened the code of international ethics and law more than ever before. So in dealing with seadromes which are exclusively aids to international aviation, a discussion of their establishment, their functions and their regulation will be inevitably tied in with established principles of the law of nations.

Seadromes may to some extent be likened to floating structures permanently moored. Such structures even though capable of being moved are in reality built, designed and intended to be comparatively permanent. Instances of similar structures are floating dry docks, floating hotels, floating scows or stationary dredges. These in nearly all instances have been excluded from the classification of vessels as understood in admiralty law.[7] If they are not to be classed as vessels, then they must seek and gain their right to be moored on the high seas from some other source than the law of nations which permits the high seas to be used by vessels of any nation on an equality with those of any other.

It is to be noted that only the right of use is permitted vessels and not the right of appropriation which is sanctioned. Whether such appropriation is only of a part is of as great importance in determining whether the law of nations is violated, as if the claim were made to the whole. The importance of this primary fact is readily seen when it is considered that a seadrome might increase the mobility of aircraft about 50% according to its location. It might likewise, if unrestricted, be used as a refueling station for submarines, and other war vessels. It could be used as a base for military operations, and in many other ways enhance the strategic situation of a belligerent in time of war, as well as be of inestimable value in time of peace. Great wars have at times been precipitated in order to gain such strategic points from which to operate, and

7. *Ruddiman* v. *A Scow Platform*, 38 Fed. 158; *Cope* v. *Vallette Dry Dock Co.*, 119 U. S. 625, 30 L. Ed. 501; *Salvor Wrecking Co.* v. *Sectional Dock Co.*, 21 Fed. Cas. 12273; *Snyder* v. *A Floating Dry Dock*, 22 Fed. 685; *The Big Jim*, 61 Fed 503; *The Steamboat St. Hudson*, 11 Fed. Cas. 6355; In re *Hydraulic Steam Dredge No. 1*, 80 Fed. 545.

it is hardly believable that world powers will permit another power to gain so large a handicap over the others without invoking the law of nations, if only as a protective measure.

It would be futile to even attempt to conceive a seadrome built and established solely for the use of one nation. This would require armament for its protection in case of war; it would be subject to bombardment and capture; large naval establishments would be required to patrol the vicinity in which it is anchored, and in addition it would be the subject of much misgiving and irritation in international circles due to the undoubted advantage it would give to the air service even if used for maneuver or other training or demonstration purposes. There would be a race between nations for the construction of such landing stations, each with an eye to possible use in time of conflict. The importance of the seadrome as a means of furthering commercial aeronautics by transoceanic flights would be submerged in the anxiety for their establishment as agencies of the military and naval branches of the service. To allay all such fears, and to quiet a possible race toward aerial conflicts, at least until international law, sanctioned by the approval of the larger nations, concedes a broader privilege, a seadrome must of necessity be established by common consent or agreement of nations and be free and open to all on equal terms. We must conclude that the establishment of a seadrome on the high seas is a matter of concern to all nations, and that the right and power to establish such seadrome would have to be agreeable to all nations having any claims to the use of the high seas for their own vessels, aircraft or navies.

Next, we will consider the functions of the seadrome. These, it must be admitted, will have to be co-extensive with the purposes for which the seadrome is established, that is, for the more successful accomplishing of transoceanic flights, for the better protection of the flier, and for the improvement of flying conditions. There is much that can be accomplished by a seadrome to assist transoceanic flight in addition to what has been mentioned. Even the temporary landing facilities will prove of inestimable value on a flight of three thousand miles or more in case of a storm, the overhauling of engines, the replacement of parts, refueling, and many more matters incident to such a flight are all within the functions of a seadrome. Each and every one of these will make possible a flight which otherwise must only remain to be espoused by such heroic figures as in the past have dared to risk their lives on the engine, craft and fuel

with which they started, pitted against a continuous gruelling grind of thirty or more hours, fogs, storms, darkness and no rest.

Since the establishment of a seadrome on the high seas is to be in conformity to the law of nations, and not exclusively for the nation whose citizens undertake such work, then it follows that the functioning of the seadrome will likewise be for the benefit of each and all. That all facilities of the seadrome should be at the disposal of all who have use for them, and not restricted by reason of nationality or otherwise.

Finally, we pass to the regulation of the seadrome; and in this sphere the law of nations will likewise have to control. Regulation of seadromes must be through agreement of all interested parties. A commission created by international sanction could most effectively supervise the operation of seadromes. This commission while being bound by certain fundamental conditions relative to the rights and extent of use of the seadrome, could in its discretion provide such rules and regulations as would carry out its purposes.

In establishing regulations for seadromes, the cardinal principle to be kept in mind is the fact that the seadrome and its vicinity must be a neutral zone. Also, that it is entitled to protection from all acts of aggression or appropriation and that it must in any event be kept free and open for use at all times for the purposes of its establishment. It should never be used for military purposes nor made the battleground of hostile forces; it should have no armament but should be upheld in its neutrality and security by public sanction of the law of nations. If the seadrome were considered only a commercial instead of a wartime aid to aviation, its regulation would not be a difficult matter. In the united efforts of those who want to see aviation make progress, there would be realized such regulation as accords with reason, understanding and progressiveness.