

Journal of Air Law and Commerce

Volume 32

1966

Book Reviews

Howard J. Taubenfeld

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Howard J. Taubenfeld, *Book Reviews*, 32 J. Air L. & Com. 140 (1966)
<https://scholar.smu.edu/jalc/vol32/iss1/5>

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

BOOK REVIEWS

SPACE: ITS IMPACT ON MAN AND SOCIETY, edited by Lillian Levy. W. W. Norton & Co., 1965, pp. xv, 228. \$4.50

This volume, edited by Lillian Levy, a journalist now on the staff of the NASA Office of Public Affairs, is presumably an effort to introduce the lay reader to the complexities of the impact on human society of man's new ability to penetrate outer space. Like most collections where the individual articles are very brief and the subject matter is vast, it tends to be an introduction to the questions rather than an attempt to analyze or answer them. For one new to the implications of space developments, the fact that many of the contributions are on a rather elementary level will not prove overly disturbing and some of them are worthy of note.

The collection opens with a short article by President Johnson on "The Politics of the Space Age," reprinted from *The Saturday Evening Post* of 1964. Its message of the need for cooperation and of past opportunities missed in this search for "a new leadership of hope" (page 9) is certainly an appropriate one as is the President's comment that:

The real challenge of the Space Age is for the politician to tear down the walls between men which have been erected by his predecessors and contemporaries in the political field—rather than to raise its barriers higher into the free and peaceful vastness of space (page 9).

The role of the military in space activities is discussed in this collection by General Bernard A. Schriever, a brilliant missileman and a staunch advocate of the military mission. Only last September (1965), the President announced plans for a military Manned Orbital Laboratory (MOL) in space, a response to these long-pressed arguments, especially of the Air Force.

"The Law in Outer Space," a contribution by Attorney General Nicholas deB. Katzenbach, one of the earliest lawyers in orbit, is, considering the previous work in the field by the same author, both disappointingly brief and elementary. The issues are raised but there is little to reflect the vast amount of study and effort already devoted to attempts to answer the questions raised. While it is true that the field has been badly overwritten, there is ample room for the more incisive type of analysis which Mr. Katzenbach has, elsewhere, given to it.

Two other selections of interest are those on "International Satellite Communications" by Thompson H. Mitchell and on "Conflict in the Race for Space," by the editor, Mrs. Levy. In the latter, she identifies many of the key problems of allocation of resources, and of the struggle for power and influence both within the government and without. From

what is there, it is possible to feel that, if she had gone further, and deeper and had pursued her themes at greater length, an outstanding contribution to space literature could have resulted.

Other pieces cover, in shotgun fashion, everything from space medicine to religion and morals in the space age, but they suffer from the flaw of superficial coverage and analysis. Perhaps, though, the volume will whet the taste of its readers for further discussion of the problems posed for men and nations by the surging technology of this new age of discovery.

Howard J. Taubenfeld

INTERNATIONALES LUFTRANSPORTRECHT, by Werner Guldiman. Schulthess & Co., AG, Zürich, 1965, pp. 263. Sfr. 30

No man is indispensable, but the energetic Dr. Guldiman is one of the driving forces of the ICAO Legal Committee, so much so that it is not facetious to speak about the "Guldiman system," which involves extensive use of questionnaires to assess where delegates stand on particular issues; Dr. Guldiman often uses charts and diagrams to explain particularly difficult situations and concepts to fellow delegates.¹ It is fascinating to observe him in action at a Legal Committee meeting. He is an example of how a delegate can be aided by knowledge of languages. The discussion shifts between Spanish, English, and French but not once does one see Dr. Guldiman use earphones for translation. In his own participation in the discussions he methodically alternates between use of French and English in his speeches, as he possesses the multilingualism for which the Swiss are admired.

Dr. Guldiman has frequently contributed to air law literature; he is the author of a useful card index of international air law cases² printed in German, English, French, and Spanish. A major part of the card index and of Dr. Guldiman's other writings is on the subject matter of the Warsaw Convention.³ He is therefore well qualified to write a commentary on that convention.

The Warsaw Convention, The Hague Protocol,⁴ and the Guadalajara Convention⁵ all refer to the French text in doubtful cases so a knowledge of French is essential for their interpretation. Dr. Guldiman, although writing this commentary on the law of international transport by air in

¹ For an interesting discussion of how the ICAO Legal Committee functions, see *ICAO and the Unification of Private Air Law*, 2 1956 Yearbook of the International Institute for the Unification of Private Law 199 (1957). [Editor's note: See also, Mankiewicz, *The Legal Committee—Its Organization and Working Methods*, 32 J. Air L. & Com. (1966).]

² Guldiman, Card Index of International Air Law Cases.

³ Convention for the Unification of Certain Rules Relative to International Carriage by Air, 12 Oct. 1929, 49 Stat. 3000, T.S. 876 (effective 13 Feb. 1933).

⁴ Protocol to Amend the Convention for the Unification of Certain Rules Relative to International Carriage by Air, 28 Sept. 1955, 1955 U.S. & Can. Av. 521.

⁵ Convention Supplementary to the Warsaw Convention for the Unification of Certain Rules Relative to International Carriage by Air, 18 Sept. 1961, 1963 U.S. & Can. Av. 313, 28 J. Air L. & Com. 45 (1961-62).

German, skillfully refers back to the French versions by including texts in both languages and commenting on the correctness of the translation.

The Warsaw Convention has been a uniquely successful private international law convention, ratified by 74 states, although its low limits on the liability of the carrier to each passenger had to be doubled in 1955 in The Hague Protocol, which has been signed by 45 states. The Guadalajara Convention of 1961, which regulates the liabilities of air carriers or operators other than those of the contracting carriers, has been signed by 13 states. Only within the last three years⁶ did The Hague Protocol and the Guadalajara Convention come into effect. Dr. Guldiman's commentary is the first comprehensive explanation of the Warsaw Convention as amended by The Hague Protocol, and of the Guadalajara Convention. This timely book fills a vacuum in legal literature.

An initial cross index quickly shows the reader where the Warsaw Convention has been amended by The Hague Protocol. Justifiably Dr. Guldiman omits discussion of sections which preceded the changes brought about by The Hague Protocol; earlier commentators have adequately discussed these provisions. Instead, Dr. Guldiman presents a complete commentary of the amended Warsaw Convention.

The comments of the author are based on his own thinking, on writings of other scholars, and on case law. Authorities are listed at the end of his discussion of each article. Dr. Guldiman not only explains the text, but indicates what he believes are weak points in the Convention. An air carrier may experience frustration in attempting to prove that all necessary measures had been taken to avoid damages, or that it was impossible to take such measures.⁷ That is an unreasonable situation, Dr. Guldiman believes. If a plane vanishes without a trace, the air carrier cannot produce any evidence, although if evidence were available it might be able to avoid liability. The differences in rules of evidence existing in member States result in lack of uniformity. *Res ipsa loquitur*, for example, is found only in common law countries; the existence or nonexistence of this rule can be of importance in posing the defense of "necessary measures" (pp. 114-15).

Regarding the controversial Article 22 which limits the air carrier's liability, Dr. Guldiman states that development of aviation no longer justifies limits on liability. He stresses the extreme difficulty of finding limits which the United States can accept, but he concludes that limitation of liability is preferable for the following reasons: it is exchanged for the carrier's presumed fault, it eases the evaluation of the risk involved and thus facilitates obtaining insurance, it favors the economically weak claimant (because the liable assets of the carrier will not be swallowed up by exceedingly high claims), and it prevents increased fares which the carrier would impose if it had to pay higher insurance rates (p. 10).

The purpose of the new Guadalajara Convention is described succinctly.

⁶ The Hague Protocol went into effect on 1 August 1963 and the Guadalajara Convention on 1 May 1964.

⁷ Warsaw Convention, *supra* note 3, art. 20.

When a state ratifies the Guadalajara Convention in addition to the Warsaw Convention, it subjects contracting as well as performing carriers to the regime of the Warsaw Convention and they are made jointly and severally liable (pp. 214-18). Besides stating the Convention's purpose, Dr. Guldiman discusses the various difficulties in which a state may find itself when some Warsaw States do not ratify the Protocol and others do not ratify the Guadalajara Convention (which really is only a second protocol); however, as Dr. Guldiman mentions, it is practically unthinkable that a state which has not already ratified the Warsaw Convention would ratify the Guadalajara Convention (p. 205).

Dr. Guldiman's commentary is clearly and simply stated. Even a practicing lawyer without prior experience in air law will find it useful and only an intermediate knowledge of German is necessary to benefit from this book, particularly if an English text of the treaties is kept at hand.

Dr. Guldiman precedes his book with a description of conditioning factors such as increases in aircraft speed, range, size, and changes in structure of operation and the strong movement toward mass transportation by air. Other writers might have taken the social, economic, and technical changes more into consideration in interpretation of the rules which regulate the rapidly developing air transport industry. Expectations regarding the law change so that the lawyer who handles a case will always have to produce arguments which satisfy the present situation. It is exactly because of changes in sociology, economics, and technology that the Warsaw Convention has had to be updated by The Hague Protocol and the Guadalajara Convention, and these same factors have made it imperative that the United States seriously consider whether the Warsaw Convention satisfies present needs or whether this country would be better served by its denunciation.⁸ This situation illustrates how imaginative the lawyer must be in his interpretation of international private air law.

The dynamic Dr. Guldiman has, as usual, put much effort into his work product. This is indeed the intended standard manual which the practicing lawyer as well as the scholar needs. It is hoped that this book will be translated into English in order to see wide use.⁹

Paul B. Larsen*

⁸ The United States has not ratified The Hague Protocol or The Guadalajara Convention and, on 15 November 1965, denounced the Warsaw Convention, effective 15 May 1966. See Kreindler, *The Denunciation of the Warsaw Convention*, 31 J. Air L. & Com. 291 (1965).

⁹ Note that a substantial number of the States which are parties to The Hague Protocol and the Guadalajara Convention have English as their first or second language.

* B.A., Wilmington (Ohio) College; LL.B., University of Cincinnati; LL.M. in International Law, New York University; LL.M., in Air and Space Law, McGill University; presently engaged in space law research at Yale University and is a candidate for the J.S.D. degree.

CORPORATE AND LEGAL HISTORY OF UNITED AIR LINES, INC. AND ITS SUBSIDIARIES, 1946-1955, by Adriano G. Delfino. United Air Lines Inc., Elk Grove Township, Illinois, 1965, pp. xxiv, 1331.

As its introductory statement indicates, this volume "is an internal document prepared by an employee whose task has simply been to chronicle significant corporate developments and present these against a background of management philosophies and events which transpired within the industry and around the Nation during the period reviewed." A predecessor to this work, which covered similar subject-matter for 1925-1945, was published in 1953.

The book consists of five parts. Part One contains a summary treatment of regulatory and certain other governmental developments in the period, together with the relevant positions taken by UAL. Part Two discusses in detail such aspects of the airline's affairs as inter-carrier relationships, equipment policies (including development and research), ground facilities, aircraft operation and maintenance, safety problems, and litigation. Part Three takes up the company's corporate structure, finance (including insurance and taxes), and personnel matters. Parts 4 and 5 deal with state and foreign regulation, and the history of UAL's former Mexican subsidiary, respectively.

It is of course impossible for an outsider to make a fully informed appraisal of a volume of this nature. However, the present writer feels competent to predict that Part One should prove extremely useful as a reference work for those already familiar with regulatory developments as well as for the education of neophytes. As for the rest of the book, which deals with territory relatively unfamiliar to her, this reviewer can say only that it appears to be a thorough and workmanlike job which should be valuable not only to UAL employees but to many others interested in problems of airline management.

Lucile Sheppard Keyes

BOOK NOTES

WORLD AIRLINE RECORD. 2d ed., Roadcap & Associates, Chicago, 1965, pp. 493. \$29.50

This new edition of *World Airline Record* is the sixth in a series which began in 1948 under the title *Airline Record*. It presents the history and current position of each of the world's 306 regularly scheduled airlines in service at the beginning of 1965.

Besides presenting traffic, financial, and statistical data, the book discusses the carrier's development, its problems, and its prospects. Such topics as managerial decisions and policies, government regulation (*e.g.*, important CAB decisions in the United States), traffic trends, competition, mergers, revenues, earnings, and future plans are outlined. On many of these subjects the editors have drawn their own conclusions.

The four and one half pages devoted to British European Airways provide an example of some of the topics developed. First, BEA's history is traced, describing its expansion and development. Then the important agreement with BOAC (British Overseas Airways Corporation) is discussed, including why and how it was made. Next the editors explore BEA's practice of concluding "pooling arrangements" with its European competitors; the company's reasons and policies are outlined. New British competition is the next topic with the influx of "independents," mainly charter airlines, and the consequences of the Civil Aviation (licensing) Act analyzed. BEA's financial and economic status is discussed, with the editors bringing in their own views. Following this is a section on the helicopter service development program, and then a discussion of BEA's aircraft development. Finally, BEA's German internal services, which are expected to be lost to Lufthansa, are discussed. The section on BEA is concluded with lists of the airlines's affiliated companies, equipment, officers, directors, and a tabulation of its fleet. Included is a route map of BEA's services.

Each airline is analyzed in much the same way as BEA. Of course, space is afforded to each airline according to its size and importance within the industry, ranging from a paragraph for Air Gabon (Africa) to eight and one half pages for Pan American World Airways.

World Airline Record provides a survey of the world's airlines, and as such it is a valuable contribution to the industry. Moreover, it is the only publication of its kind.

L.M.F.

AIRCRAFT ACCIDENT INVESTIGATIONS: A STUDY IN COMPARATIVE ADMINISTRATIVE LAW (1964), Joint Research Project No. 4, McGill University Institute of Air and Space Law, Montreal, 1964, pp. 263.

This volume is the fourth in a series representing the findings of joint research groups at the Institute of Air and Space Law. Project Number 4 was prepared by four graduate students at the Institute under the supervision of a member of the faculty, and was completed during the 1963-1964 academic year. Its purpose, as stated in the introduction to the work, is to provide a comparative study of various national systems which might "be a first step toward unification and, it is hoped, will encourage further steps in this direction" (p. 8). Four papers are presented, each prepared by an attorney familiar with the legal system discussed. These deal with the legal regulation of aircraft accident investigations in the United States, the United Kingdom, Scandinavia, and Western Europe.

The research project met with two main problems: first, the practical impossibility of separating rules of accident investigation from the general rules of administrative law and administrative procedure; and second, the theoretical impossibility of reconciling technical and juridical aims of

an aircraft accident investigation. As a result, the papers do not include general recommendations, but merely present the systems in use in the States or areas covered. Instead, the volume includes a series of questions which should be answered before a "scheme of aircraft accident investigations is set up in any one country" (p. 119).

Finally, the first five appendices provide a useful compilation of the statutes, agreements, and regulations concerning accident investigation of ICAO, the United States, the United Kingdom, Scandinavia (Norway and Sweden), and Western Europe (Switzerland, Austria, France, Italy, and West Germany). In addition, appendix six sets forth the ICAO Suggested Aircraft Accident Report Form (1959).

C.A.T.

BRITISH AIRPORTS, by John W. R. Taylor (2d ed.). Sportshelf, New Rochelle, New York, 1965, pp. 63. \$1.25

This small pamphlet contains a survey of forty-five of the aerodromes in the British Isles. The author points out in his introduction that the book's main value will be to the visitors to these aerodromes. The presentation of each aerodrome includes a diagram, an historical sketch, and a summary of the services available as well as pictures of the facilities of most of the aerodromes surveyed. Several additional features such as a summary of the activity at the aerodromes in the United Kingdom and the channel islands during 1963 and the fleet lists of the British independent airlines are presented. The pamphlet is of limited use except to air travelers in the British Isles.

E.A.P.