The Law Relating to Activities of Man In Space

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BOOK REVIEW


When asked by a law journal to review a book, and you accept knowing that one of the two authors is that particular law journal's faculty advisor, you have some doubts as to your wisdom. What if the book is not what it should be? What if it is what you believe is good? In the one situation you throw mud at your host; and in the other you can be accused of praising a burnt roast.

Perhaps it is the Christmas season when this review is written, but fortune smiled, for the roast was cooked well and tempered with moderate seasoning. Or, to be more prosaic, the book is organized in proper legal fashion and is assisted by moderate writing tone and supported by extensive footnotes and excellent appendices. The appendices alone provide a reason for purchase giving an excellent one-place reference of United States military space programs, laws over outer space crimes, domestic use of communications satellites, international organizations and significant treaties and documents set out in full.

Quickly, lest praise come too readily, the book has a serious major fault. It lacks an adequate index. By the shortage of entries one can almost write that it lacks anything but a suggestion of an index. In fact, the scholar seeking to use the book for research would find himself hindered, hampered and handicapped every word of the way. For example, one of the prime space law inquiries is where space begins, if it does begin someplace. To most this is equated with a “boundary”; a boundary between air and space, or between sovereignty and a free area. But, there is no entry for “boundary” or akin words; no “b’s” at all in fact. The boundary topic is discussed under “Sovereignty Based on an Extension of Territory Outward.”

Another example of this fault is the topic of space stations or spaceports. These are the waystations proposed to ease the travel problem from earth to other celestial bodies. Nothing appears in the index, although in a sub-title (at page 87) is “The Legal Status of Artificial Bodies in Space and of Space Stations and Equipment on the Celestial Bodies.”

If a properly prepared supplemental, and full, index could be prepared
as an insert and given with the book, its usefulness would accelerate dramatically.

The work is a bar association (American Bar Foundation) inquiry. It is stated to be an "expanded and comprehensive treatment of the law of outer space." The work is comprehensive, but the impression this reviewer received is that it is a combination of a law reporting and an espousal of a view. The introduction says it is an attempt "to study the law . . . as it exists now and as it may develop." The "may" lends some credence to the impression that the authors expressed personal preferences. The Antarctica Treaty is one example. Although the small major word "if" precedes a discussion of the analogy-value for outer space, this is obscured by a wish expression. Nations can find peace in space, allegedly, because they will be able to police effectively and breaches would involve little danger. This is not the situation. Antarctica is unique from space. The ice area has no publicized military value or possibility expounded, whereas the skies above and planets therein have had Buck Rogers fantasies approaching reality with hastening speed. This goes to the authors' conclusion that the political statement of a sea of peace can come to pass. This is not reality. We had earlier professorial writers who would end war on earth by literally having nuclear biggest-hole-in-the-moon contests to resolve earthy disputes and those who would confine war to space and not permit it on land. But, if war is to be, it will be in space as in air, on land, and on (and in) the sea. The question then is of the law that would apply. To this topic the work is silent. The interested can go to Verplaetse's new work.¹

Any attorney, or teacher, with outer-space interests will find some weaknesses in lack of emphasis. Two are noted. On the boundary question, mentioned as to index weakness in its absence, an omission of the tri-zonal theory of the late John Cobb Cooper glares forth. If nothing else, Cooper's view that there could be a sovereign zone, a quasi-sovereign area, which can be equated to the authors' functional control suggestion (at page 48) and finally open freedom, bears repeating and analysis. Another gap is the treatment of spaceports. The reviewer has written in the Journal,² and others,³ on space stations and hoped for the authors' views or reported law on the spaceport analogy to "anchored lightships and Texas towers," which the authors state but do not complete. Nor do the authors consider the "island" comparison, which offers analogies for space-law development.

For this review two strengths can serve as examples of particular aids.

An interesting discussion of the bases of jurisdiction outside defined sovereign areas is given, neatly summarized as territorial, nationality, protective, universality and passive personality principles. This is clear and with imagination the reader can foresee possible guides to argument in future controversies. The other particular is the chapter on satellite communications. With its historical review and technological detail, it provides a summary of worth.

The space law scholar and the interested viewer can both read, enjoy, and study the book—but do add an insert of an adequate index.

Camron Kingsley Wehringer*

BOOKS AND PAMPHLETS

The following includes major domestic and foreign books, pamphlets and articles, pertinent to aviation and aerospace law, released since the last issue of the Journal. The articles appearing in leading domestic legal periodicals are digested.

INTERNATIONAL


* Member of the New Hampshire and New York Bars.


DOMESTIC


ARTICLES

International


CURRENT LITERATURE

Rechtsfragen des internationalen Verkehrs mit Schwebebahnfahrzeugen, by Francke, 19 ZEITSCHRIFT FUR LUFTRECHT UND WELTRAUMRECHT- 

La révision de la convention de Varsovie et la responsabilité du trans- 
porteur aérien, by Constantinoff. 24 REVUE FRANCAISE DE DROIT AERIEN 
393-08 (1970).

Versicherungs und Haftungsfragen bei Flugzeug führungen, Sabota- 
gehandlungen und bewaffneten Angriffen gegen ein Luftfahrzeug, by 
Meyer. 19 ZEITSCHRIFTFUR LUFTRECHT UND WELTRAUMRECHT 

DOMESTIC

Engstrom, The Constitution and the Warsaw Convention: Are They 

The author examines the constitutionality of the Warsaw Convention 
and the Montreal Agreement, and weighs the treaty power of the Na- 
tion against the "spurious" policy arguments hypothesizing unconstitu- 
tionality.

Gotlieband & Dalfen, Proceedings of the Inaugural Conference on the 
Legal Problems of International Communications, 20 U. OF TORONTO 

This article presents the second report of the U.N. Working Group 
on Direct Satellite Broadcasting of October 1969. It identifies problems, 
discusses legal, cultural and social aspects of the problems and suggests 
appropriate international bodies for further study of direct broadcasting 
of TV signals to home sets.

Hirsch & Fuller, Aircraft Piracy & Extradition. 16 N.Y.L. FORUM 392 

In view of the problems presented by airline inability to apprehend 
hijackers prior to flight and the risk inherent in attempted in-flight app- 
prehension of hijackers, the authors discuss and analyze solutions to the 
problems of air piracy and hijacking as they relate to extradition and 
international law. The possibilities for the return of hijackers discussed 
are the extradition pursuant to treaties, pilots' association boycotts, and 
international conventions such as the Tokyo Convention of 1963 and 
the possibility of a world tribunal.

Van Panhuys, Aircraft Hijacking and International Law, 9 COLUM. J. 

The author discusses the Draft Convention drafted by ICAO. He
compares hijacking of aircraft to the hijacking of ships and examines the aspects of the plea of political crime. The article suggests solutions to these problems.


The article catalogues the approaches to solving air piracy and discusses what future action to take to eliminate it as well as international blackmail. It surveys the legal and scientific devices to detect piracy initiated in the U.S. and urges other countries to adopt them. The authors propose international co-operation such as the Tokyo Convention of 1963, The Hague Convention of 1970, and the draft convention now on the international agenda.


The article relates the trial of an actual case and how the plaintiff establishes both probable cause and the defendant's liability. It includes pertinent excerpts of the trial, discovery procedure, pre-trial depositions, pleadings, jury selection, opening statements and testimony. It demonstrates the adversary trial system working even in complex litigation.


The article notes the trend to expand state courts' jurisdiction through interpretation of long arm statutes, thus utilizing state court rules to permit aggressive pre-trial procedure and expeditious discovery. The authors theorize that vicarious liability or strict liability should be imposed against a common carrier asserting that it flew passengers in a defective aircraft; that post-accident safety changes be admissible into evidence; that summary judgment is appropriate when the carrier's liability is indisputable since both parties are thereby benefited.


The writer explores the ramifications of the proposed SST and the accompanying sonic booms which will devalue property and induce inverse condemnation suits by irate property owners. He concludes that such suits should effect government's decision to proceed with development of the aircraft and force re-evaluation of its position.

Mr. Larson examines the relationship of the FAA and local authorities, recent technology of noise reduction, the FAA's claim to regulation of noise, the substantive parts of the regulations, potential areas of noise reduction and the public reaction to the regulations.


The author surveys theories of municipal immunity in airport operation. The article provides an analysis of current Iowa law on municipal liability in airport operations.


The author discusses the 1969 U.N. Treaty on Principles Governing Activity in Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies. The article focuses on areas of insuring compliance, remedies for violations and the treaty in relation to U.S. defense policies.


The author defines "avigation easement," including a brief background discussion. Mr. Sullivan examines the present state of the law emphasizing problems such as establishing liability and proving damages in a trial.

**BOOKS RECEIVED**


