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Mankiewicz, ed.: Yearbook of Air and Space Law 1965

Howard J. Taubenfeld
Southern Methodist University

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YEARBOOK OF AIR AND SPACE LAW 1965. Edited by *Rene H. Mankiewicz*. Montreal: McGill University Press. 1967. Pp. xi, 705. \$25.

Yearbooks in the field of international law tend to take one of two broad forms. The first is a collection of articles which may or may not be keyed to developments in the particular year for which the volume is issued; the *British Yearbook of International Law* is one of the more distinguished examples of this approach. The other form is informational rather than erudite and offers a record of transactions, events, or data related to the year in question. The *Yearbook of Air and Space Law* is something of a hybrid, and the fact that the 1965 volume, which is to be the first of a series, appeared in 1967 indicates that the project is an ambitious undertaking.

In his introductory remarks Professor Mankiewicz states that the book is not—and presumably could not be—a “complete review of the development of air and space law in 1965” (p. viii). He points

to human and financial limitations upon research, and to cost factors limiting the number of pages which could be printed. He also recognizes the importance of time, which makes a yearbook comprised of "factual" materials for a given year, rather than scholarly analyses of the problems highlighted by the year's development, less valuable if it is not published soon after the appearance of the materials presented. In fact, timing, along with organization and material selection, constitute the book's major difficulties.

The first of the book's two parts is devoted to air law. Appropriately, it opens with a survey ("doctrinal") article, *Backgrounds of International Public Air Law*, by the late John Cobb Cooper, who was a director of the Institute of International Air Law at McGill University and an innovative thinker in the field of air and space law. His death has left a void among those who are concerned with this field. Professor Cooper presents a concise analysis of the origins of international public aeronautical law in the general principles of international law, discussing in detail the development of rules for airspace and noting that the major problem of delimiting the upper boundary of airspace in this era of satellite flight remains unsolved. Freedom of flight over the high seas and the still-difficult questions concerning the "nationality" of aircraft are also reviewed. Professor Cooper's views have been so widely published that this survey understandably contains no surprises; it is, however, a brief, useful introduction to some of the present problems in air law.

The next 300 pages or so are given over to sections which survey developments in aviation law in various countries (section II); treaties—including general treaties, joint support agreements, regional arrangements, and bilateral agreements (section III); the work of the International Civil Aviation Organization (ICAO) and regional aviation organizations (section IV); interested nongovernmental organizations (section V); and national legislation (section VI). Section VII consists of a bibliography. The same format is repeated in the second half of the *Yearbook*, which deals with space law; thus, the book is not well integrated and is somewhat confusing and difficult to handle.

The problems of currency and selection of material are also evident upon reading the air law portion of the book. For example, section II is planned as a series of surveys of national air law. It opens promisingly with a lively review of *Aviation Law in Australia* by Dean J. E. Richardson of the Australian National University law faculty, who manages to capture the historical development, legislation, and case law in a readable and useful way. However, all that follows this appetizer are two- to five-page capsules concerning Canada, Poland, Yugoslavia, and the Scandinavian countries. This congeries suggests inclusion on the basis of availability rather than im-

portance in the realm of world aviation;¹ one would hope that at least capsule reviews of developments in the world's major air centers would appear in the ensuing volumes of the *Yearbook*.

The treaty section gives the status, in most cases as of the end of 1964, of the major international aviation conventions and also prints the text of several of the less well-known joint support agreements.² Bilateral treaties registered with the ICAO in 1965 are listed. It also includes conventions and related documents of the French African air services, Agence pour la Sécurité de la Navigation Aérienne (ASECNA), the East African Common Services Organization, the European Organization for the Safety of Air Navigation (EUROCONTROL), and a few others. A later section contains material on the operations of these and other regional organizations (section IV, p. 230). Printing this material constitutes a real service since several of these documents have not been readily available in this country. Section IV on intergovernmental organizations records the activities of the ICAO during 1965 in some detail. Those in the field will be familiar with the materials; the section is nevertheless useful for reference. The notes in section V deal with a range of nongovernmental organizations—from research bureaus to that extraordinarily powerful noncartel, the International Air Transport Association (IATA). In several cases, these notes tend to be historical rather than descriptive of transactions during 1965; however, extracts from IATA's Director General's Report and from its Legal Committee's Report in that year are printed. Future volumes might well ignore the other entities and focus on IATA in even greater detail.

Some other relevant materials are treated briefly. There are short reports on legislation and regulations in twenty-four countries, and the texts of some 1964 or 1965 statutory materials from four nations are included (section IV).³ Some case material from a few countries is reported (section VII).⁴ The concluding bibliography includes brief summaries, notes, or listings of books, articles, and other reference materials in English, French, and German. All of these, if broadly expanded, would be of great service to practitioners and scholars, especially those without access to foreign materials.⁵ The book thus

1. This is also suggested by the fact that the only major review, that from Australia, is in fact a condensation of an article under the same title which appeared in 1 *FED. L. REV.* 245 (Austl. 1965).

2. *E.g.*, Agreement on North Atlantic Ocean Stations, Feb. 25, 1954, [1955] 6 U.S.T. 515, T.I.A.S. No. 3186, 311 U.N.T.S. 347; Agreement on the Joint Financing of Certain Air Navigation Services in Greenland and the Faroe Islands, Sept. 25, 1956, [1958] 9 U.S.T. 795, T.I.A.S. No. 4049, 334 U.N.T.S. 89; Agreement on the Joint Financing of Certain Air Navigation Services in Iceland, Sept. 25, 1956, [1958] 9 U.S.T. 711, T.I.A.S. No. 4048, 334 U.N.T.S. 13.

3. The four are France, New Zealand, Switzerland, and the United Kingdom.

4. The countries include Norway, South Africa, Sweden, Switzerland, the United Kingdom, and the United States.

5. While it is no doubt true that the United States materials (cases, legislation, etc.)

gives us a preview of how future editions may be improved to meet the existing needs of the air law community.

Part II of the book follows a similar format and has similar virtues and faults. However, the rapid movement of international events in the field of space law makes immediacy of publication an even greater problem. A personal caveat must also be offered; in this reviewer's opinion, "outer space" has already received far too much nonconstructive attention from lawyers.⁶ Perhaps future volumes of the *Yearbook* will trim "outer space" down to size, leaving more pages for coverage of air law. Indeed, the sharp division between "air" and "space" might itself be questioned. As General White said when he was Chief of Staff of the United States Air Force: "In discussing air and space, it should be recognized that there is no division, *per se*, between the two. For all practical purposes air and space merge, forming a continuous and indivisible field of operation."⁷ Future volumes might well stress the existence of the continuum rather than emphasize a separateness. In all spheres, it is the actions of nations and men which concern us; only the milieu is in part novel.

The space law half of the book opens with a useful review of the period from 1957 to 1965 by Professor Ivan Vlasic,⁸ who is now at McGill and who was a collaborator with McDougal and Lasswell in their massive study of outer space problems.⁹ Vlasic's account focuses on the United Nations to a considerable degree. Again, events have outstripped prognosis; the Space Treaty of 1967,¹⁰ now in force for the major space powers, and the agreement on rescue and return of astronauts and space objects, also drafted in 1967,¹¹ answer firmly some of the questions heretofore available for speculation, although the "outer space" regime remains largely one of self-policed national cooperation without structured internationalization.

are more readily available than those from many other countries, it is hardly parochial to suggest that, in a comprehensive yearbook, they should be reported rather fully in view of their volume and importance domestically and their affect on international aviation.

6. As the author of books and articles in the field, I naturally recognize that many of the publications over the past fifteen years have substantial merit. It is those other fellows who should never have written.

7. White, *Air and Space Are Indivisible*, AIR FORCE MAGAZINE, March 1958, at 40-41.

8. *The Growth of Space Law 1957-65: Achievements and Issues* (p. 365).

9. M. MCDUGAL, H. LASSWELL, & I. VLASIC, LAW AND PUBLIC ORDER IN SPACE (1963).

10. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies, Jan. 27, 1967, T.I.A.S. No. 6347.

11. On Dec. 19, 1967, the U.N. General Assembly urged [Res. 2345 (XXII)] adherence to the Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space. For the text of the resolution and treaty, see 58 DEPT. OF STATE BULL. 85 (1968). For commentary on the treaty see Dembling & Arons, *The Treaty on Rescue and Return of Astronauts and Space Objects*, 9 WM. & MARY L. REV. 630 (1968). Forty-four countries, including the United States, Great Britain, and the U.S.S.R., signed the agreement on April 22, 1968. See N.Y. Times, April 23, 1968, at 13, col. 1.

As in the air law part, the remaining sections offer only partial reporting and listing of national and international materials. The emphasis seems curious, and the usefulness of the materials will depend largely upon the completeness of the reader's own library resources. Thus, while there is a useful survey of French legislation, there is relatively little similar material from the United States. There is also good coverage of the European Space Vehicle Launcher Development Organization and the European Space Research Organization, but no interpretive comment which would make their problems come alive. The United Nations materials seem overemphasized. They are available in other forms, and developments during the gap between events and publication of the *Yearbook* make much of the material of relatively little interest.¹²

Now that the initial volume has presented much of the historical background, future editions can concentrate on presenting more current material. As with many publications, the *1965 Yearbook of Air and Space Law* leaves the reviewer both pleased and frustrated. It is a worthy effort which should be continued; it is disturbing to see how much is left out. It is a useful addition to the library for much of what it contains; it does not relieve the lawyer or the scholar of the necessity of keeping all the other relevant source materials in the complex and rapidly changing field of aerospace law.

Howard J. Taubenfeld,
Professor of Law,
Southern Methodist University

12. *E.g.*, the proposals concerning assistance to astronauts (pp. 566-81) have been relegated to history by events of 1967, the year in which this volume was published. For the conclusion of treaties on or relevant to this matter, see notes 10 & 11 *supra* and accompanying text.