BOOK REVIEWS

Aerospace Law, by NICOLAS MATEESCO MATTE, LL.D., Professor of Air and Space Law at the University of Montreal. (Sweet & Maxwell Limited, London, and the Carswell Company Limited, Toronto, Canada 1969), pp. 1-501. Australian Price $15.65.

This book is the most recent, and one of the more important, contributions to the growing body of learned literature on aerospace law.

In his Introduction, the author canvasses the new problems in the world community arising from the atom, the rocket, interplanetary travel and the occupation of the moon and other celestial bodies and, by reference to contemporary scientific events, stresses the urgency for international adoption of a code of aerospace law, which keeps pace with man's exploration and use of space. The laws which govern space activities will finally determine whether the activities promote world peace and the scientific, cultural and economic benefit of mankind. The author's purpose is to describe the essential elements of space activities and their related legal structure as a background for providing answers to the world community problems arising from the new technology.

The book is divided into five Parts, each Part being divided into chapters. The chapters are further divided into consecutively numbered sections, which are referred to in the footnotes as "pts.". A "pt.", of which there are seventy-nine, may cover twenty pages or a few lines. Thereafter the author, apparently at random, uses letters or numbers in varying styles for further breakdown, but these have no obvious pattern or consistency. There is no Index (other than of "Authors Cited") but eventually the reader will find, at the very end of the work, a sixteen page Table of Contents which is apparently designed to serve also as a substitute for an Index. The form and organisation of the book will, therefore, appear curious to Anglo-Saxon readers, while the style of writing also suggests that the author is much more at home writing in French as he did in his well-known book *Traité de Droit Aérien-Aéronautique*.

Part I is devoted to a study of the legal status of space and the classification of space vehicles and their use. In the course of a detailed survey traversing much well trodden ground, Professor Matte rejects the various zone theories based either on effective control or artificial and unscientific distinctions between navigable airspace, atmospheric space and outer space. He considers them to be "far-fetched". He points out that, in any event, the establishment of vertical boundaries in space raises considerable difficulties because of the earth's spherical shape. Furthermore, Einstein's theory of the curvature of space demonstrates that the calculation of height under any zone theory is much

more complicated than early legal theorists assumed, since in the astronomical field the notion of time and the calculation of space are not determined as on a flat surface.

Professor Matte asserts that the principle of national sovereignty in the airspace enshrined in Article I of the Chicago Convention, 1948 has received exaggerated emphasis and become "a shirt too tight to wear". The principle should be replaced with one of "freedom of functional international air traffic which would, at the same time, preserve the security of the state". The author says that only a functional approach seems adequate to achieve efficient co-operation between states whether or not they are powerful in air and space.

The starting point of the functional approach is the obliteration of all divisions between air and space. On the one hand this approach accepts rights recognised as belonging to states, such as their functional sovereignty over air traffic or the activities of their citizens, and on the other hand recognises a functional freedom of all states, consistent with security, to engage in humanitarian, scientific and exploratory activities in space.

Professor Matte says that as yet there has been no thorough study of this type of approach. In fact, the approach has been espoused by various writers in Europe and North America. Professor Myres S. McDougal and Associates *Law and Public Order in Space* deals in depth with all the facets of a functional approach raised by Professor Matte and it is, therefore, somewhat surprising to find only one brief reference in this part of his text to this monumental work. It is questionable whether the Matte treatise carries consideration of the approach very much further. One could reasonably expect, for example, some analysis of the various activities in aerospace and their legal status under the functional approach having regard to the fact that state sovereignty in the airspace is so firmly established in international law and would probably constitute a rule of customary international law even apart from the Chicago Convention. Such an analysis would perhaps assist in determining the validity of the possible grounds on which state sovereignty in the airspace may rest.

The book includes a comprehensive set of Annexes (one hundred and twenty pages) which contain the texts of the more important United Nations General Assembly Resolutions and international conventions, agreements and treaties affecting space, including the ELDO Convention establishing a European Organisation for the development and construction of space vehicle launchers, the United States inspired INTELSAT Agreement establishing interim arrangements for a global commercial communications satellite system, the Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space and Under Water, the Treaty on Non-Proliferation of Nuclear Weapons, the International Atomic

Energy Agency Statute, and the Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and other Celestial Bodies.

Parts II, III and IV of the text contain descriptions of background and operation of the Agreements set out in the Annexes and assess their current status. Most chapters in these Parts are introduced with a "pt." entitled "Generalities" which, unfortunately, usually obscure rather than elucidate the particular description of subject matter which follows. Thus the Generalities introducing Chapter II of Part II, for example, which describes governmental organisations concerned with space activities, comprise the following observation:

> The framework of governmental organizations, as regards to size, is very similar to that of non-governmental organisms; except that in this case, we are truly in the presence of a single world-wide organization, of major importance, of course. International governmental cooperation has revealed itself either on a larger regional basis, or on a more restricted one, going from real inter-state cooperation to administrative or semi-private cooperation, and finally reaching certain local organizations as a consequence of a state's influence, or by simple bilateral treaties or agreements.

On other occasions the author has completed his description of some facet of aerospace law by stating conclusions and these tend at times to be equally confusing. For example, in the very significant Chapter II in Part IV entitled "The Peaceful Uses of Space" the author describes the search by the U.S.A. and the U.S.S.R. for a *modus vivendi* in the form of a space agreement leading eventually to The Outer Space Treaty of 1967 which Professor Matte criticises for its inadequacies to cope with the current and future problems of the exploration of outer space. The author's concluding remarks read as follows:

> Because the use and insertion of expressions such as "international law" and "Charter of the United Nations" in various treaties leads to confusion, also because United Nations resolutions are either preceded by treaties or ratified by international treaties of almost identical texts, it seems unnecessary to keep repeating them with such prodigality. If, however, for various reasons, it seems useful to refer to them, we should at least be content with the mention of "certain principles of international law or of the Charter of the United Nations" applicable to the matter to which various resolutions or treaties refer and perhaps later defining, in an aerospace code, the scope of these principles. To a certain extent, it seems even more proper to consider that the space activities are creating new circumstances which can favourably influence general international law.

Part V, under the provocative heading "After the Conquest of the Moon: Towards an Interplanetary Law" is a disappointing section of the book. It comprises only two pages, and refers briefly to the possibility of extra-terrestrial immigration and dismisses as premature the

formulation of interplanetary law to govern relations here or elsewhere with "extra-terrestrial inhabitants". The only justification for Part V is that it will provide an appropriate slot for more adequate treatment in a later edition of the work.

Finally, there is a short un-numbered section headed "Final Remarks" which contains the author's principal conclusions. The section is overburdened with footnotes introducing new material that might have been more appropriately included in the main text and some, at least, of the conclusions do not appear to have been fully developed in the text. In summary, these conclusions are:

> The division between air law and outer space law is artificial and temporary and, due to accelerated technical advances, it is necessary to recognise that space is not divisible and to work towards an aerospace law.
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> The moon and other celestial bodies can in fact be appropriated and the various United Nations Resolutions and the Treaty on the Peaceful Uses of Outer Space are not sufficient to stop such appropriation. If celestial bodies are to enjoy a status of freedom of exploration and exploitation for the benefit of mankind, a worldwide international agreement is necessary.
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> The United Nations Organisation, as it is now structured, is not in a position to establish space laws and regulate space activities. It lacks global character, and does not represent a world parliament from which supreme laws would issue.
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> Space law is developing in a regime of bipolar competition between the United States and the Soviet Union. The political, scientific and economic antagonism between these two states negates realisation of so-called peaceful activities in space. Thus most of these activities still have a military character and there is a necessary duplication of the great material efforts necessary in this sphere. As long as this bipolarism continues, the world is far from the possibility of general participation by world agencies for the benefit of mankind.
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> A special legal status must be given to economical uses of space, such as satellite telecommunications.
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> The Treaty on the Peaceful Uses of Outer Space, which sets out principles of guidance for the peaceful exploration of outer space, suffers from weaknesses which greatly reduce its scope and efficiency. It represents a temporary compromise between the opinions of the United States and the Soviet Union, rather than a world-wide space code to serve humanity at large, with the aim of protecting future exploitation of space. It will, therefore, have to be re-evaluated and complemented, if not completely replaced, by an agreement establishing a code of conduct and good faith in space.
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> Finally, it is necessary to abandon the efforts of creating a new law divided into law of war and law of peace, as is being planned at present, and in addition to obtain the acceptance of a complete

disarmament proposal instead of choosing the weapons of future wars permitted on earth and in space.

While these conclusions under-estimate the importance of the work of the United Nations and its specialised agencies in relation to space activities, Professor Matte substantially achieves the hope he expressed in his Introduction of providing a valuable background for solving the problems arising from man's exploitation and use of space.

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Fashion of Law in New Guinea, edited by B. J. BROWN, LL.B. (Leeds), LL.M. (Singapore), Fellow in Papua-New Guinea Law, Australian National University. (Butterworth and Company (Australia) Ltd., 1969), pp. 1-254, P/B $8.25, Cloth $10.00.

Speaking before the seminar on "The Rule of Law in a Developing Country", organized by the International Commission of Jurists in Port Moresby in 1965, a senior public servant indicated what the Rule of Law meant to a "lowly administrator" in Papua and New Guinea:

> To me it is a clear indication that the Rule of Law has taken root, *when* a bitterly and closely contested election is fought cleanly, and without lawlessness, and the electors abide by the results, *when* a Hanuabadan magistrate, having passed out a stiff sentence to a Kerema in the morning, can sit unmolested amongst a crowd of Keremas at a football match in the afternoon, *when* an unescorted surveyor can measure up a parcel of village land which is to be compulsorily acquired for a public purpose without interference from the disgruntled land owners . . .[1]

Recent violence on Bougainville and in the Gazelle Peninsula suggests that little progress has been made towards these goals since 1965; indeed, the indications are that these upheavals are only a preview of things to come. With the stepping up of the rate of economic development and the spread of education, Australia must expect increasing dissatisfaction with all aspects of its rule in the Territory. For this reason alone, the appearance of *Fashion of Law in New Guinea* is extremely timely. The book is to be welcomed for an additional reason: it is the first monograph devoted exclusively to legal issues in the Territory. It consists of ten papers delivered at a symposium held at the Australian National University in 1966, brought up to date, and edited by the then research fellow in Papua-New Guinea law at the University, B. J. Brown. They range over the whole spectrum of the legal situation in the Territory, including the problems of reception of western law and legal education. Although all the contributors except one are lawyers, the laity will find the book intelligible and stimulating.

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[1] D. Fenbury, "Kot Bilong Mipela" (1965-1966) 4 *New Guinea* 61.