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BOOK REVIEWS

ISRAEL AND PALESTINE—ASSAULT ON THE LAW OF NATIONS, by Julius Stone. Baltimore: The John Hopkins University Press. 1981. Pp. 223. $17.50. *Reviewed by Barry Hart Dubner**

The international ferment and series of recriminations resulting from Israel's annexation of the Golan Heights underscores the timely nature of this study. The author examines the situation through a study and advocacy of Israel's viewpoint. Following the introduction of the subject matter, he presents his study in the following eight chapters: (1) Jewish and Arab Self-Determination Rights: The Time-Frame; (2) General Assembly Resolutions and International Law; (3) Territorial Rights in Palestine Under International Law; (4) Abortive Partition Proposals; (5) International Law in Israel-Arab Relations Since 1948; (6) General Assembly: Dismantler of Sovereignties? (7) Sovereignty in Jerusalem: The International Concern; (8) Conclusions: Assault on Israel and International Law; together with appendices, maps, documents and two discourses, notes, and index.

The author's purpose is to provide a case study in the sociology of contemporary international law and examine the impact of changes in the constitution and power balance within the United Nations on the rights of Israel. The issues addressed by the author include: How valid are General Assembly resolutions as sources of international law concerning matters other than those limited situations in which the Charter makes them binding? When, if ever, do such resolutions express international law binding on states? When, indeed, is weight to be given even to their assertions of fact? How should the weight given these resolutions be affected by the use of coercion by a resolution's supporters (*e.g.* the use of the oil weapon)? Can the United Nations pass upon the scope of a state's territory? Is the "sovereign equality" of Article 2 subject to the whims and conceptions of automatic

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* Visiting Associate Professor, Stetson University College of Law, 1979-1982. J.D. 1969, New York Law School; L.L.M. 1974, Miami; J.S.D. 1975, New York University.

majorities in the General Assembly? Is the legal establishment of a state on the basis of the self-determination principle, and is its admission as a peace-loving, law-abiding state to membership in the United Nations subject forever after to reevaluation by its declared enemies? Has the adoption of the Charter, as most international lawyers believe, reinforced the cardinal principle *ex iniuria non oritur iusl*[1] in its application to aggressor states, or has it (as the Arab states now claim) released aggressor states from this principle by entitling them to automatic restoration of the *status quo ante bellum* whenever their aggression is defeated? Is the "self-determination principle" a principle of present international law, or is it only an important policy or guideline? In any case, what are the precise limits of this principle? What is the intertemporal effect when an application is challenged half a century later by another people which only at that later time has recognized itself as a rival claimant? What are the wider implications of any rule adopted with respect to the operation of legal principles in the stream of time? Do general principles of international law sanction the use of force by some members of the United Nations who claim they are vindicating that later claimant's self-determination?

The author raises these issues and examines the arguments and conclusions of certain recent UN Secretariat "studies" and their central theses: (1) that the Resolution of November 29, 1947,[2] is still legally binding on Israel, requiring her to accept or even facilitate the establishment of a state in addition to Israel and Jordan within the border of Mandated Palestine west of the Jordan (Cisjordan); and, that (2) this same Partition Resolution also imposes legal obligations on all member states of the United Nations to ensure that such a third state, in addition to Israel and Jordan, is established; (3) that repeated recitals in General Assembly resolutions[3] establish an international law "right of return" of Palestinian refugees; (4) that repeated references in General Assembly resolutions after 1970 constitute a legal determination of the right of self-determination of Palestinian Arabs and that the General Assembly is empowered to remodel the boundaries of Israel accordingly.

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1. "Out of injury not speaking justly."

2. G.A. Res. 181 (1947) (on the future government in Palestine, often referred to as "the Partition Resolution").

3. *E.g.*, G.A. Res. 194 (1948) to G.A. Res. 3236, U.N. Doc. A/Res/3236 (1974).

The book examines the legal merits of the various arguments from two main premises: first, the conflict of claims to self-determination between the Jewish and Arab peoples; and second, the standing and force in international law of General Assembly resolutions.

With the dichotomy of interest of the Jewish and Arab states and the various Resolutions of the United Nations as background, the author presents various well-reasoned arguments in support of Israel's position vis-a-vis the Arab states and the Palestinians that live within them.

The author does not suggest a solution to the issues he sets forth. His theses, however, should be carefully scrutinized. The extensive appendices, maps, and workable index enhance the merit of this contribution.

TREATISE ON AIR—AERONAUTICAL LAW. Nicolas Mateesco Matte. Toronto: The Carswell Co. Ltd., Pp. 832. *Reviewed by John M. Lindsey**

Although humans have been capable of flight since the Montoglifier brothers invented hot air balloons in 1783, air travel and air law are essentially phenomena of the twentieth century. Indeed, less than seven decades elapsed between the historic flight of Wilbur Wright in 1903 and the landing of astronauts on the moon in 1969. Technology has advanced in rapid strides, and the law has done what it can to keep pace.

Like many human achievements, however, aviation has a capacity for good and evil. Commercial aviation has become a major means of transporting people and goods in the last forty years, and military aviation has thrived on global war as well as countless lesser conflicts. Matte sharply highlights the darker side of flight by including a passage from *The History of Rasselas, Prince of Abyssinia,* which Samuel Johnson wrote in 1759. In this tale a scholar agreed to make wings for the Prince on condition that additional wings would not be requested for others. When the Prince expressed surprise, the scholar replied, "if men were all virtuous, I should with great alacrity teach them all to fly. But what would be the security of the good, if the bad could at pleasure invade them from the sky?"[1]

Matte has managed to collect a considerable amount of information about the history of air law and aviation. He tells the reader, for example, that the idea that a land owner holds title "[t]o the heights of the heavens and the depths of the earth" can be traced to a Rabbi Akiba, who lived during the first century A.D.[2] We are told also that Leonardo da Vinci sketched something very much like a helicoper.[3] Wilbur Wright's historic flight, however, is disposed of in this brief comment: "But on December 17, 1903, in the wilderness of Kitty Hawk, North Carolina, an American, Wilbur Wright covered 284 metres in fifty-nine

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* Professor of Law and Law Librarian, Temple University School of Law; B.A. 1951, Southern Illinois University; J.D. 1958 and M.S. (in L.S.) 1962, University of Illinois.

1. N. MATTE, TREATISE ON AIR—AERONAUTICAL LAW 20 (1981).
2. *Id.* at 54.
3. *Id.* at 18.

seconds, while Captain Ferber achieved the same success in France."[4] Most American have never heard of Captain Ferber, but then, perhaps, many Frenchmen do not know about Wilbur Wright.

No major area of air law escapes Matte's attention in this treatise. All significant international conventions, agreements, and protocols are examined in detail, and the full text of each basic document is included in appendices. The Warsaw Convention and the related Hague Protocol are printed in parallel columns so that a reader can make an article-by-article comparison. Matte provides a detailed table of contents as well as a long bibiliography at the end of his treaties. To some extent those features compensate for the short, inadequate subject index, but a comprehensive index would have made the book a much more valuable research tool.

Matte tries to draw a distinction between air law and aeronautical law. In his view air law relates to "the medium in which the aircraft evolves, what stems from it, and what is contingent upon it,"[5] whereas aeronautical law is "the legal normative framework concerning aerial navigation."[6] He stresses that "aeronautical law is only a part of air law, though at the present time, the most important."[7] According to Matte, air law is an autonomous legal science which must "be presented separately from other closely connected sciences."[8] Whether such a separation is either possible or desirable is, of course, debatable. In contrast, the well known Shawcross and Beaumont Treatise spends little time on distinctions of this kind and simply states that "International air law is a combination of public and private international law."[9]

Matte deeply regrets the fact that an International Court of the Air has not been created. Such a tribunal would establish "a single Court specialized in air law matters, and which alone could pass judgment and create an authoritative and, more especially, unified jurisprudence."[10] The idea of a special international tribunal has merit, but no serious efforts in this direction seem likely

4. *Id.* at 24.
5. *Id.* at 51.
6. *Id.*
7. *Id.* at 52.
8. *Id.* at 48.
9. 1 C. SHAWCROSS & K. BEAUMONT, AIR LAW 13 (4th ed. 1977).
10. N. MATTE, *supra* note 1, at 40.

in the near future. Municipal courts have traditionally filled the main jurisprudential role, and they will probably continue to do so for many years to come. It is difficult to determine how well national courts have performed. This consideration, however, may be less important at the moment than the danger posed by lawyers in common law and civil law countries who are unfamiliar with doctrines peculiar to each other's legal systems.

Matte's treatise goes some distance in bridging the gap between civil and common law. The chief virtue of this book is its cosmopolitan examination of air law problems from the perspective of more than one nationality or one legal system. Decisions of French and other civil law courts are discussed at length as are cases from common law jurisdictions such as the United States and the United Kingdom.

Most United States lawyers probably do not know that double jeopardy has a civil law counterpart in the principle of *ne bis in idem,* and they have never heard of the fault concepts *dol* and *faute lourde,* which are similar to the notion of willful misconduct in the common law. Matte's description of the trend from presumed fault to strict liability in the context of the Warsaw Convention is especially well done. His understanding of United States law is also impressive, but he may not completely understand our federal system. At one point he refers to "The Federal 'Uniform Condition Sales Act.' "[11]

Matte is Director of the Institute and Centre of Air and Space Law at McGill University in Montreal. He is also President of the Canadian Branch of the International Law Association. He has devoted much of his life to the study of air law, and his writings include at least seventeen books and twenty-six articles dealing with air and space law.[12]

The first edition of this book, *Droit aérien-aéronautique,*[13] was written in the French language and published in 1954. The new 1981 English language edition makes the work of Matte more accessible to lawyers in English speaking countries. It will not, however, replace standard works in the field. Bin Cheng's treatise,[14] for example, contains a much clearer explanation of the various

11. *Id.* at 561.

12. For a full treatment of space law, see S. LAY & H. TAUBENFELD, THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE (1970).

13. N. MATTE, DROIT AÉRIEN-AÉRONAUTIQUE (1954).

14. B. CHENG, THE LAW OF INTERNATIONAL AIR TRANSPORT (1962).

freedoms of the air, and Shawcross and Beaumont[15] generally provide a more functional approach. Nevertheless, Matte's treatise is a welcome and valuable addition to the literature of air law.

15. *See* C. SHAWCROSS & K. BEAUMONT, *supra* note 9.