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## Book Note

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# BOOK NOTE

EXPLORATIONS IN AEROSPACE LAW: SELECTED ESSAYS BY JOHN COBB COOPER 1946-1966. Edited by Ivan A. Vlastic. Montreal: McGill University Press, 1968. Pp. xx, 480. \$11.50.

As legal adviser of the International Air Transport Association for nearly the first twenty years of the organization's existence, the late Professor John Cobb Cooper was in an ideal position to perceive many aerospace problems of the future. In his tribute to Professor Cooper, Dean Maxwell Cohen of McGill University, Faculty of Law, speaks of the Founding Director of McGill's Institute of Air and Space Law as the "dean of air and space lawyers in North America." This volume houses a representative selection of Professor Cooper's essays concerning legal problems of aeronautics and astronautics, most ably brought together by Professor Ivan Vlastic of the Institute and the Faculty of Law at McGill.

In the Forward, Professor Vlastic gives a resume of Professor Cooper's career and avers the breadth of his scholarship and contribution which "covers almost every aspect of aeronautical and space activities that can be subject to legal regulation." Professor Vlastic uses the Forward to provide the reader with an excellent synopsis of what will be found in each of the six divisions of the book.

The volume contains 28 essays, representing only one-third of Professor Cooper's aerospace articles, but as the editor concedes, they represent areas in which his contribution was most significant. These spheres are: the history of air law; the fundamental principles of air law (notably airspace sovereignty and nationality of aircraft); and space law. In the first part, four essays serve to introduce the reader to the problems of terminology and the scope of air and space law, the economic and political basis of air power, and certain specific problems to be examined subsequently in depth.

Part two, entitled "Rights In Airspace: From Antiquity To The Advent Of Aircraft," is devoted solely to the origin of the maxim *cujus est solum* and its relevance to contemporary air law. This discourse is evaluated by Professor Vlastic as "the most comprehensive study of the subject available and is a magisterial example of disciplined scholarship"—an accolade shared by this reviewer.

In part three, consisting of six essays, the reader is taken back to the formative period of the law of the air and is shown the foundation and evolution of the modern principle of state sovereignty in airspace. Also included are essays dealing with the problems and conflict in the United States between federal and state rights in navigable airspace and the legal status of airspace over the Arctic region, territorial waters, and high seas.

One essay comprises the fourth part; it is concerned with the legal status of flight vehicles. Herein appears Professor Cooper's study of the nationality of aircraft including a comparative and historical review of nationality as applied to ships, railway trains, and automobiles. The essay concludes with a supplemental note on the basic problems of spacecraft nationality.

The fifth part embodies nine essays which touch a variety of topics based upon man's penetration of the upper atmosphere and outer space. In this section Professor Cooper is concerned with the legal regime of space above and beyond the airspace, questions of high altitude flight and national sovereignty, the lines of demarcation between territorial or sovereign airspace and international outer space, contiguous zones and jurisdiction within these zones, the rights to possession and sovereignty on occupation of a celestial body, and the legal and political implications expected to arise on the launching of the first man-made satellite. To appreciate fully the erudition and perception of Professor Cooper, the reader must bear in mind the date when the essays first appeared. He was clearly a prognosticator as to the legal issues to arise on man's technoscientific advances in air and space and flexible enough to alter his views when factual presentation proved him to be in error.

Professor Cooper examines the role of the United Nations in aerospace law and the effect of the General Assembly's December 1963 resolution, a "Declaration of Legal Principles Governing the Activities of States in the Exploration and Use of Outer Space." He considers whether "peaceful use" of outer space means nonaggressive use of strictly nonmilitary use; whether observation satellites should be restricted in recording or photographing conditions or objects on the earth's surface; the extent to which communication satellites may be used for propaganda; what uses of outer space by a State might require prior agreement from other States; and whether States alone or other nongovernmental entities may use outer space.

In the final part, there are seven essays devoted to the problems in international regulation in air law and space law. During 1946, the

author first wrote about the interrelated legal, economic, and political fundamentals of air transport and about the conflicts between national and international interests over it. More than twenty years later, his note introducing the essay, "Air Transport and World Organization," informs us that the problems described are still present. His views on the influence of the Bermuda Agreement of 11 February 1946 between the United States and the United Kingdom are the subject of an essay. Another essay outlines the history of disagreement between the United Kingdom and the United States over the issue of international ownership and operation of world air transport services. In the final essay, the author expresses grave concern over the future of the 1944 Chicago Convention on International Civil Aviation because of major ambiguities in the Convention and the inapplicability of it to flight instrumentalities which require no support from reactions of the air.

Three essays focus on specific problems involving outer space. One deals with the question of whether general international law, the Charter of the United Nations, or recent U.N. resolutions preclude the use of outer space by a State for the purpose of self-defense, such as orbiting a manned spacecraft for military defense purposes. Another deals with general principles of liability applicable to damage caused by space activities in view of resolution 1962 (XVII) of the General Assembly of the U.N. and the 1952 Rome Convention on Damage Caused by Foreign Aircraft to Third Parties on the Surface." The author expresses grave concern over possible conflicts of jurisdiction between the U.N. and I.C.A.O. if and when the term "aircraft" is assigned a new definition.

The book contains a number of useful indices and a bibliography of the author's aerospace writings. Professor Cooper's writings will be read by student, teacher, and specialist in these fields for many years to come. Accordingly, this volume is a praiseworthy memorial to the trail blazer of aerospace law.

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