

Journal of Air Law and Commerce

Volume 42 | Issue 4

Article 8

1976

Book Reviews

Jacob W. F. Sundberg

Barbara R. Hunt

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Jacob W. F. Sundberg et al., *Book Reviews*, 42 J. AIR L. & COM. 935 (1976)
<https://scholar.smu.edu/jalc/vol42/iss4/8>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

Book Reviews

INTERNATIONAL LAW AND OUTER SPACE ACTIVITIES. By Ogunbola O. Ogunbanwo. The Hague, Netherlands: Martinus Nijhoff. 1975. Pp. 272. Appendix.

This book attempts to examine briefly the contribution of space law to the development of international law. The book contains three parts, divided into fourteen chapters. The first part deals with the Outer Space Treaty, the second with the Assistance and Return Agreement, and the third with the liability for damages and responsibility of states and international organizations. Several chapters deal with the utilization of outer space and trends in international cooperation. The four-page bibliography notes that the book is based on a selection of English-language writings, but the principle of selection is not apparent.¹

It is difficult to be innovative in writing books on space law and the author hardly attempts to be. His book is primarily a collection and organization of materials that have been written concerning the legal implications of space exploration. In this, the book duplicates a number of other books using the same method and relying on the same materials. Innovation in this field is unrewarding to today's writers unless they turn to problems and analysis, practice and relevance. Few authors have so far done so, and Dr. Ogunbanwo is no different. He is, the cover tells us, at present employed as an assistant to the United Nations Under-Secretary General for Political and Security Council Affairs. There is every reason to wish him luck in that employment, but the United Nations atmosphere is not congenial to innovative writing. Problems are not analyzed in the UN, or solved. They are ingeniously taped over by broad formulations, and broad formulations mean legal problems only when they are related to practical problems.

Readers of the book should be forewarned that the author writes

¹ F. NOZARI, *THE LAW OF OUTER SPACE*, Stockholm (1973), is missing, to pick one example.

in the most general of terms. For example, Dr. Ogunbanwo devotes a few pages to the principle of "non-appropriation" in outer space. He never states the legal problem, not even in the summary form in which it was set forth by, for example, Nozari in *The Law of Outer Space* (pp. 109-111, 224). Dr. Ogunbanwo is content to note that "the principle of non-appropriation of outer space has been declared as being valid independently of the Space Treaty"; he notes that this principle "appears to have been seriously weakened by the withdrawal clause of the Space Treaty," but he ends with the belief that the non-appropriation "provision in the Space Treaty is workable" (p. 79 f.). Considering that the United States Government in a public relations effort presented moon rocks as gifts to several hundred international politicians when the materials were newly arrived, it would not seem uncalled for, certainly not in the eyes of the donees, to relate the non-appropriation principle to the validity, or non-validity, of these gifts. Turning the attention to the principal space users, the military men, it may even seem called for to relate the non-appropriation principle to the various interpretations of the term "appropriation" that have come to light. At the 1958 Geneva Conference on the Law of the Sea, two important powers took the position that the building of installations would be an appropriation; a few years later, a space expert considered that an interference with a spy satellite would be an "attempt at the appropriation of outer space; for it is difficult to see what the term 'appropriation' could mean other than the exclusion of other spacecraft from the particular region of space."² It would seem that the legal problem begins where Dr. Ogunbanwo stops.

In the preface the author encourages readers to expect that he will examine briefly the contribution of space law to the military uses of outer space and celestial bodies. Considering that it is the military uses of the rocket that have made the rocket rise, in the thirty years since the Second World War, to the instrument that opened up the cosmic era of mankind, one would then expect much from the parts of the book devoted to the military uses and their ancillary regulation. The Second World War was to the rocket what the First World War was to the aircraft. Ever since, missiles

² Fawcett, *A Draft Code of Behaviour in Outer Space*, J. ROYAL AERONAUTICAL Soc'y, at 830 (1964).

have been the basic strategic weapon, and since the 1960's the spy satellites have taken over as the basis of all high-level military analysis. Today's ICBMs put one continent within the reach of others and go up one thousand kilometers; new spy satellites are launched by the superpowers at the rate of one-a-week, if not more often. In view of Dr. Ogunbanwo's preface, one might have expected an exploration of the relationship between the international law and the rules for military action, not only relating to foreign military intruders in sovereign air space, as indeed the author does but with less than felicitous scholarship, but also relating to crafts passing above that air space, and too, (since he devotes some space to the Sea-bed Treaty) relating to the practice of navies to authorize immediate attack upon any submerged contact within the territorial sea which are identified as intruders. Viewed in this context, it becomes obvious how zoning is accompanied by differences in rules for military action against military and non-military objects, and how incident- and accident-prone is the creation of intermediate zones. The Sea-bed Treaty, by failing to dovetail the territorial sea limit, has meant (as noted by navy men) the creation, at places, of a free-for-all band along the territorial sea in which any power can place any device. The absence of a sharp borderline between sovereign air space and the space governed by the Outer Space Treaty would seem to have equal potentialities. Under the aspect of military use, the Antarctica Treaty, 1959, which has caught the attention of the author, is not much of a departing point when looking at the provisions of the Space Treaty due to the continent's absence of strategic value. Under the aspect of military use, on the other hand, the Sea-bed Treaty, which too is considered by the author, was much different from the Space Treaty, because of the presence of many mighty navies capable of action in case of a submerged contact and the absence of but a few space fleets capable of performing in space.

But in all these expectations, the readers will be disappointed. Dr. Ogunbanwo does not venture into an exploration of the above subjects. The relationship between rules for military action and space law receives no comment.

The book as a whole reflects the author's environment, the United Nations lobbies where observers move around recording the statements of ever-changing anonymous delegates for ever-

changing states. His next-to-last chapter, which is devoted to trends in international cooperation, is a testimony to how much the term "space law" is a United Nations creation and to the wall existing, here like in many other United Nations creations, between preaching and practice. You learn very little about practice or the practical problems, and very little about how this "space law" influences, or should influence, practical decisions in space exploration from reading this book. But you are compensated somewhat by learning something about how this "space law" came about and what was said at that time. In addition, this is a handy volume for consultation; the texts of the many United Nations documents and treaties are provided in a forty-six-page annex to the author's text.

*Jacob W. F. Sundberg**

DESTINATION DISASTER. By Paul Eddy, Elaine Potter and Bruce Page. New York, New York: Quadrangle/The New York Times Book Company. 1976. Pp. 434. \$12.50.

THE LAST NINE MINUTES. By Moira Johnston. New York, New York: William Morrow and Company, Inc. 1976. Pp. 305. \$10.00.

These two books tell the story of the Paris Air Crash, the most devastating air disaster in aviation history. On March 3, 1974, Turkish Airlines Flight 981 crashed into the Forest of Ermenonville just outside Paris, France, with 346 passengers and crew aboard. There were no survivors.

The plane was a DC-10, manufactured by McDonnell Douglas Corporation. It crashed when the rear cargo door blew off during flight, causing rapid depressurization of the plane. As a result of the stress caused by the depressurization, the floor of the passenger section collapsed, expelling six passengers still strapped in their seats through the door opening and damaging the control cables

* Law degree, University of Uppsala; LL.M., New York University Law School; Doctorate in Law, University of Stockholm; Professor of Jurisprudence at the University of Stockholm.

which were attached to the underside of the floor. This left the pilot with little or no means of controlling the plane, which then crashed.

Although both books explore the cause of the crash and trace the design history of the DC-10, *Destination Disaster* does so much more thoroughly and with greater accuracy than *The Last Nine Minutes*. *Destination Disaster* is very well documented; excerpts from pertinent documents are frequently included. In addition, over one third of the book is made up of charts, tables, and reports relating to the DC-10 and to airline safety in general. The authors do a superb job of explaining the technical reasons for the DC-10's failure for the non-technically oriented reader.

The authors of *Destination Disaster* begin their analysis by discussing the origin and development of McDonnell Douglas Corporation. The Company's corporate philosophy as expressed by its advertising is compared with its corporate philosophy as revealed by company officials during pre-trial discovery in litigation arising from the crash. Business conditions which influenced, or might have influenced, the development of the DC-10 are thoroughly examined.

Descriptions are given of the functions and operating procedures of the Federal Aviation Administration (FAA) and the National Transportation Safety Board (NTSB), the two federal agencies chiefly concerned with aviation safety. The failure of these two agencies to take adequate steps to prevent the tragedy is analyzed in relation to the political situation at the time, each agency's established practices, and the personal and professional characteristics of the men in each agency responsible for any action or inaction regarding the DC-10.

Such an intensive examination is justified by the fact that the accident did not occur without prior warning. *Destination Disaster* gives a very complete account of the blow-out of the cargo door on Ship One (the first DC-10 to be assembled) while it was undergoing pre-delivery tests of the air-conditioning system. Records established that such an accident occurred on May 29, 1970, involving Ship One, but one important piece of evidence, the Applegate memorandum, describes a similar accident occurring to Ship Two in July, 1970. The authors of *Destination Disaster* note this discrepancy in a footnote which states that they were unable to

determine if the author of the memo mistakenly referred to Ship Two when he meant Ship One, or if there were actually two such accidents. *The Last Nine Minutes* just records the accident as occurring during testing of Fuselage number two.

Both books also report the "Windsor incident," an earlier occurrence of the cargo door blowing off a DC-10 while in flight. In that instance, the American Airlines pilot managed to avert disaster and landed the plane without loss of life. In *Destination Disaster* the emphasis is on the maneuvers made by the pilot to regain control, the cause of the accident, and the remedial measures taken to correct the situation. In *The Last Nine Minutes*, the emphasis is on the human experience, the sensory, mental, and emotional experience of those persons involved—the crew, the passengers, and the farmer below who found the coffin which fell out of the plane when the door blew off.

The human experience is the central theme of *The Last Nine Minutes* from beginning to end. The author recreates the experience of the passengers and crew who perished on Flight 981, based on all available evidence, analogy to the "Windsor incident," and behavior projections prepared with the aid of aviation physiologists and psychologists from the Human Factors Department of the University of Southern California's Safety Center.

The author then chronicles the devastating effect of the crash on the families and friends of those who perished. For example, the moving story of the ancient English town of Bury St. Edmonds, which lost eighteen playing members and officers of its rugby club leaving ten widows and twenty-one children, is told.

The Last Nine Minutes also examines the evidence concerning the cause of the crash, remedial measures, and the aircraft manufacturing industry, but the emphasis is always upon the personalities involved. The author's coverage of the litigation resulting from the crash easily holds the reader's attention because of this approach. The parties, the judge, and the attorneys are all colorfully portrayed. The author captures some of the courtroom drama of the *Kween* case, the first trial to determine the amount of compensation to be paid.

These two books, although written for the general public, will be of interest to those in the field of aviation law because they fill

in the background details of a major catastrophe with which most readers will already be familiar. Although there is some unavoidable overlap, the approach of each book differs sufficiently from the other to provide additional insight into the causes, effects, and lessons to be learned from the Paris Air Crash.

*Barbara R. Hunt**

* Book Review Editor, *Journal of Air Law and Commerce*.

