

July 1958

Book Review

Follow this and additional works at: https://digitalcommons.nyls.edu/nyls_law_review

Recommended Citation

Book Review, 4 N.Y.L. SCH. L. REV. 370 (1958).

This Book Review is brought to you for free and open access by DigitalCommons@NYLS. It has been accepted for inclusion in NYLS Law Review by an authorized editor of DigitalCommons@NYLS. For more information, please contact camille.broussard@nyls.edu, farrah.nagrampa@nyls.edu.

BOOK REVIEW

PROBLEMS OF PUBLIC AND PRIVATE INTERNATIONAL LAW. The Grotius Society. (Volume 42; Transactions for the Year 1956.) London: The Grotius Society, 4 Pump Court, The Temple. 1957. Pp. xxxix, 205, and 1 (index) with annotations. 35 shillings.

PART I: PAPERS IN THE "TRANSACTIONS"

This volume—the forty-second of the transactions of the Grotius Society—is dedicated to the problems of public and private international law. It consists of the Society's papers, for the year 1956, which were read at the Provincial Conference at Bristol University, at the International Law Conference held at the Inner Temple Hall, and those presented at the periodic meetings of the Grotius Society.

The printed papers offer a wide range of interest in the aforementioned fields of law. They fall into two categories; namely, those of a generalized, and those of a particularized content. In the former category are included: nationality and the right of protection in international public law; judicial separation in private international law; the avoidance of hardships resulting from the doctrine of sovereign immunity; the right to fly; the uses and abuses of the abuse of rights in international law; and, universal principles in international law. In the category of particularized content, the reader will encounter: the French rule as to international payments; the International Court's advisory opinion on the voting procedure on questions concerning South-West Africa; and, the foreign penal laws and the English conflict of laws. Each of the articles is fully documented and as such offer a comprehensive avenue of information, guidance and understanding.

The end paper (unrelated to either of the categories hereinbefore delineated) is entitled, "Forty Years of the Grotius Society." Composed by G. Tracey Watts, Esq., of Lincoln's Inn, Barrister at Law, it sets forth the objects of the Grotius Society, the circumstance of its founding, and a full review of the chronological sequence of events which have attended the twoscore years of the Grotius Society. And to the author's concluding words, "thus ends the record of the first forty years of the activities of the Grotius Society 'Founded in 1915 for the promotion and study of international law in Great Britain,'" one may well say that this volume worthily celebrates the memorable occasion. It deserves a hearty welcome.

PART II: THE RIGHT TO FLY. By Bin Cheng. Pp. 93-131

Of special significance to this—the Outer Space Law Issue of the New York LAW FORUM—is the paper by Bin Cheng, Ph.D., Lic-en-Dr., Lecturer in International Law and Air Law, University College, London, styled, "The Right to Fly" and read before the Society on March 7, 1956. Although the author modestly confesses, at the outset, that he "brings no Theseus to slay the Minotaur" he nevertheless has contrived a most comprehensive and particularly helpful analysis of a subject which, one will readily concur, is "a hapless hostage in the hands of economic nationalism and military security."

Study of this readable article reveals it to be divided into two prime sections: first, the right to fly under customary international law; secondly, the right to fly predicated upon treaty or concessionary basis which the author has characterized as the "conventional superstructure." Concerning flight rights under customary international law, the author has dealt with the legal status of airspace, outer space, and foreign national airspace. Regarding the so-called conventional superstructure, Dr. Bin Cheng proceeds, in historical approach, to discuss the various attempts to place the right of international flight on treaty basis. An examination of these include the Paris

Conference of 1910, the Aeronautical Commission of the Paris Peace Conference of 1919, the Ibero-American Convention on Aerial Navigation of 1926, the Pan-American Convention on Commercial Aviation of 1928, the Balkan Convention on Aerial Navigation of 1936, The Temun Agreement of 1937, the Chicago Convention of 1944, with its concomitant International Civil Aviation Organization (I. C. A. O.) of the United Nations, and the recent European Civil Aviation Conference at Strasbourg. Parenthetically and touching the Strasbourg meeting of 1956, Dr. Bin Cheng predicts, "present indications are that it is likely to achieve results so far not attainable on a wider basis."

The author has gone into detailed consideration of the various articles constituting the Chicago Convention appurtenant to non-scheduled flights and scheduled international air services. Of the former, he has treated aircraft not engaged in the carriage of passengers, cargo or mail for remuneration or hire; as well as carriage of passengers, cargo or mail for remuneration or hire. In respect of scheduled flight services both transit rights and traffic rights are considered. And in a most extensive fashion, the author has set forth the complex superstructure of multipartite and bilateral agreements in the field of international air traffic and cabotage.

In conclusion of substantive remarks, particular attention is herewith drawn to Dr. Bin Cheng's observations upon the legal status of outer space. In rather descriptive language he tells us that the outer space from the standpoint of international law "is still '*res incognita*,' if indeed the void is a *res*!" It is the author's postulation that the right of flight in outer space by State or private aircraft "does not depend upon any immediate determination of its precise legal status; for, until the whole or parts of it have effectively been occupied in a manner recognized by other States, this entire region remains free flight space, like airspace above *terra nullius* and the high seas."

Without estimate of moderation, it may be stated categorically that the data which the author has gathered, annotated and synthesized may be characterized as a pocket Baedeker of air law. Dr. Bin Cheng's labors display a dynamic approach to the area of air law, a strong sense of historical order, a vigorous and incisive style, and the enthusiasm of a sound and worthy scholar.

FRANKLYN C. SETARO

PROFESSOR OF LAW
NEW YORK LAW SCHOOL