

LAW AND FOREIGN POLICY IN INTERNATIONAL AVIATION: PAUL STEPHEN DEMPSEY. ARDSLEY-ON-HUDSON, N.Y.: TRANSNATIONAL PUBLISHERS, INC., 1987, 468 PP., \$60.00.

by WILLIAM E. THOMS\*

There are not many aviation law books on the market, and those that appear focus primarily on regulation and deregulation of domestic air transportation in the United States.<sup>1</sup> Some books are directed to pilots who need to know the impact that the FAA has on their operations, while others are still heavily involved with the workings of the now-defunct Civil Aeronautics Board.

It remained for Professor Dempsey to address the issues of the still-regulated area of international transportation. For deregulation still stops at the water's edge, despite the efforts of Canada<sup>2</sup> and some other nations to emulate the United States' progress in this field. But the area of international air policy has been more of a political than a legal structure, and Dempsey wisely incorporates the prevailing political winds into his treatise on post-deregulation aviation.

There is no comparable freedom of the air that corresponds to the freedom of merchant shipping. Although national boundaries may end in outer space; in aviation national sovereignty is alive and well and goes up to the limits of the atmosphere. Professor Dempsey attempts to tell how this state of affairs came to be, starting with the Chicago Convention of 1944<sup>3</sup> and continuing through the bilateral regime of Bermuda-type agreements to the present day.

The first part of the book deals with the regulation and deregulation of air travel in the United States. Although today entry and exit are free for the taking and the Civil Aeronautics Board is dead,<sup>4</sup> deregulation ends at

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1. See, for example, A. Lowenfeld, *AVIATION LAW* (1982), G. Pucci, *AVIATION LAW* (1977). There are materials emerging for use in aviation education programs at U.S. colleges, but most of these are aimed at the amount of law and F.A.A. regulations that pilots need to obtain their certificates.

2. The Transportation Act of 1987, effective January 1, 1988, effectively brings the U.S. system of free entry, exit and rates to Canadian skies. See Thoms, *Canadian Air Deregulation*, 15 *TRANSP. L.J.* 137 (1986).

3. P. Dempsey, *LAW & FOREIGN POLICY IN INTERNATIONAL AVIATION* 7-13 (1987).

4. Airline Deregulation Act of 1978, Pub. L. No. 95-504, 92 Stat. 1705 (1978). See P. Dempsey, *supra* note 3 at 25-26.

the water's edge. Part I deals with the effect of U.S. deregulation upon our nation's aviation partners, and the response of European carriers and their tentative moves toward liberalization of economic constraints.

When deregulation occurs, antitrust is supposed to fill the gap. Antitrust is thought of as an American phenomenon by foreign commentators. In Part II Professor Dempsey outlines how antitrust considerations have guided U.S. policy in dealing with our aviation partners. A good deal of this part deals with the author's own critique of the "open skies" policy and what Dempsey believes to be the sacrifice of the interests of U.S. carriers to the purity of deregulation abroad. In dealing with changing policies toward aviation competition, the author describes most of the recent bilateral agreements between the U.S. and aviation destination countries since the rise to power of the Department of Transportation.<sup>5</sup>

Part III deals with arbitration of disputes between airfaring nations. Although there is some discussion of ad hoc arbitral tribunals, the majority of this short section deals with dispute settlement by the two major international entities in Montreal—the U.N.'s International Civil Aviation Organization and the industry's own International Air Transport Association. The discussion of the role of ICAO is particularly cogent and complete, concluding with a question of why ICAO's dispute resolution process does not receive more use.<sup>6</sup>

Part IV is an ambitious section attempting to summarize the concept and structure of international law and then to apply it to aviation. This is a huge topic and probably too broad to be applied as an afterthought to a book of this sort. But the analysis of international law becomes more focused with Dempsey's final topic, that of aircraft hijacking and the response of the international community.<sup>7</sup>

As a teacher of aviation law, I am impressed by the text's timeliness and the astute political thought. For my purposes, the book lacks two important questions in international air law: the Warsaw Convention (which limits liability in international air accidents) and its future, and the demarcation line between air law and space law, a line which is certain to grow fuzzier with the emergence of the hypersonic vehicle.<sup>8</sup> I found myself asking what the prospective audience is for this book—practitioners or law students? The author seems to seek a middle ground. But for the

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5. P. Dempsey, *supra*, note 3, at 192-229.

6. *Id.* at 300-302.

7. *Id.* at 349-382.

8. The hypersonic vehicle takes off like a plane and then, during its flight, becomes a spacecraft. There is a body of space law which affects space vehicles and their launched objects, which has a different basis than the air law regime so carefully catalogued in Professor Dempsey's book. It appears that the aviation lawyer of the 21st century will have to be an astro-lawyer as well.

serious researcher or lawyer seeking in-depth analysis of aviation and the legal regime that supports it, Professor Dempsey fills a gap in the literature and does it with clarity and style.

