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International Ocean Shipping: Current Concepts and Principles

Keywords

Maritime Law, Admiralty Law, Environmental Law

BOOK REVIEWS

International Ocean Shipping: Current Concepts and Principles

*Reviewed by R.O. Goss**

ABRAHAMSSON, B.J., *INTERNATIONAL OCEAN SHIPPING: CURRENT CONCEPTS AND PRINCIPLES*; Westview Press, Boulder, CO (1980); \$27.50 (cloth); ISBN 0-89158-875-2, LC 79-26674; xv, 232 p.; footnotes, bibliography, tables, diagrams, index, appendices.

Those with serious interests in maritime affairs have long been ill-served by authors. Some have produced mechanical textbooks for mechanically passing rather boring examinations, and others have been, essentially, either apologists for whatever the current situation happened to be or protagonists of a particular viewpoint. Few books have dealt with basic principles. Despite such exceptions as Dr. O' Loughlin's book,¹ there has long been a gap for an introductory and basic textbook which, while describing the underlying principles, does not attempt to pass judgment. Professor Abrahamsson has now filled this gap.

He commences with an overview of merchant shipping and quickly introduces the reader to basic terms and concepts such as dry cargo ship types, containers and the "mini-bridge" in the course of a few pages. The reader is then equipped for later chapters which sensibly move from the general to the particular. Next there is a chapter on "Transportation Economics" in which Abrahamsson is not afraid to discuss other transportation modes and to note the economic advantages and disadvantages of the different modes.

In chapter three, the discussion of elasticity of demand is sensibly brief and avoids algebra. However, the following discussion of coordina-

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1. C. O'LOUGHLIN, *THE ECONOMICS OF SEA TRANSPORT* (1967).

tion² leads to the surprising statement that: "We may, in the not too distant future, see the development of 'transportation systems companies' rather than independent, one-link operators."³ If this refers to *physical operators* of international services, then any gravity model⁴ renders it improbable; and, if this refers to *organisers*, then we have had them in the form of through-transport container services for many years. The author also presents in chapter three the hoary old fallacy that the ideal cargo should utilize both weight and volume capacities,⁵ whereas observation shows that this is frequently not done (for instance by ore carriers), and that there is nothing wrong with disregarding this advice. There is nothing nonoptimal about ore shipments. Freight rates have more effect than suggested here on modal choice, and, if there were a cheaper way to transport ore, that way would be employed.

Even though this information might have been included in the earlier overview chapter, the next chapter, entitled "The Elements of Ocean Shipping," discusses the design of ships, the financing of their building, and the need to analyze demand for types of ships versus their cost to build. This discussion is followed by a rather complex diagram⁶ showing the relationship between type of carriage contract, types of service, and ships by type of cargo. This diagram is interesting and might be advantageously expanded, as could the discussion of it. However, the author finally admits that there are so many overlaps that the diagram can be no more than a useful frame of reference. In rapid succession sections on technological changes in ships and in ports are next presented. The use of shipboard computers and hyperbolic navigation systems (but not SATNAV) as well as classification agencies are discussed.⁷ This is a rather curious selection of topics.

The next chapter is called "Functional Types of Ships," but it actually has separate sections on machinery, hulls, and cargo gear, as well as a discussion of ship types. In the next chapter, "Types of Transport Contracts," the author discusses bills of lading, letters of credit, the Carriage of Goods by Sea Act,⁸ and charter parties.⁹ There is, however, only the

2. "Coordination" refers to the coordination of supply with demand. "Supply" is the supply of the various transportation modes from origin to destination. "Demand" is the demand for transportation of the goods from the origin to the destination. B.J. ABRAHAMSSON, *INTERNATIONAL OCEAN SHIPPING: CURRENT CONCEPTS AND PRINCIPLES* 30 (1980).

3. *Id.*

4. The term "gravity model" is used to describe a theoretical construct of transportation movements between different points. The model assumes that the volume of traffic between each pair of points is likely to vary inversely with the distance between the two points.

5. B.J. ABRAHAMSSON, *supra* note 2, at 42.

6. *Id.* at 55.

7. Classification agencies issue rules and standards for materials, construction, and maintenance of ships. *Id.* at 61.

8. Carriage of Goods by Sea Act, 1924, 14 & 15 Geo. 5, ch. 22. The Act passed in England (and similar ones passed in the United States and Canada) incorporates the Hague Rules relating to bills of lading. The Hague Rules have three objectives: to standardize bills

briefest introduction to each subject and no indications of the extent to which litigation occurs in these areas. "Marine Insurance" is the next chapter. Again, it is largely descriptive but contains a welcome passage on the state of the insurance market.

Despite an earlier chapter entitled "Freight Rates and Tariffs," there is also a chapter on "Rate Determination: The Tramp and Liner Markets." No reason is given for having two separate chapters. The author explains derived demand, the relationship between gross national products and world trade, and the significance of cargo volume, distance, political and natural factors on freight rates. All this is covered briefly and, unfortunately, without much analysis. Certainly, the object seems to be to introduce the reader to these subjects rather than to train him how to produce market reports. The history of the attempt to fix freight rates for sailing ships in 1905 and the history of the more successful attempt to put some floor under the market in the 1930's are interestingly related. Here, as elsewhere in this volume, there is little discussion of where the public interest may lie.¹⁰ Liner conferences¹¹ are next described, although the reader will already have read the detailed discussion of liner tariffs noted above.

Next, there is a short chapter on "Flags of Registry." Flags of convenience¹² and the potential effects of such open registry on future shipping policies are the major topics of the chapter. Also mentioned are UNCTAD's¹³ efforts to help developing countries increase their tonnage.¹⁴ Finally, there is a chapter describing international organizations.

The book as a whole thus does not move in a very systematic way from topic to topic. It would have benefitted greatly from a thorough re-ordering of the material and perhaps a second edition will provide this. Such didactic criticisms aside, the book gives a very fair, if necessarily brief, analysis of current shipping problems and procedures. There are few concessions to the student wishing to be spoon-fed. Generally, this is

of lading, to set rules to expedite claims settlement, and to standardize rights and obligations of both shippers and carriers. B.J. ABRAHAMSSON, *supra* note 2, at 88.

9. "Charter parties" are the contracts used in tramp shipping. B.J. ABRAHAMSSON, *supra* note 2, at 91.

10. For instance, a worthwhile discussion would have included topics such as what are reasonable profits and whether rates should be fixed or are best determined by market conditions.

11. "Liner conferences" are cartels in the liner trades. Members meet to set prices and to divide up markets. B.J. ABRAHAMSSON, *supra* note 2, at 20.

12. Flags of convenience are available to anyone satisfying minimal conditions and are sold to foreign shipowners wishing to escape the fiscal and other consequences of registration under their own flag. They offer shipowners advantages in order to attract tonnage. *Id.* at 132.

13. UNCTAD is the acronym for United Nations Conference on Trade and Development.

14. The aim of UNCTAD was for less developed countries to account for 10% of world deadweight tonnage by 1980. B.J. ABRAHAMSSON, *supra* note 2, at 131.

welcome.¹⁵ Each chapter is followed by useful references: There is an index (whose compiler is keener on the concrete than on the abstract), appendices providing the texts of several important conventions, and an extensive bibliography. This is a good basic introduction for those students in interdisciplinary courses who can supplement the book with other sources.

15. However, the diagrams on page 34 show $MC=AR=MR$ without any explanation at all, which is disconcerting for anyone without economic training and especially if studying alone, e.g., at sea. Moreover, all diagrams are used solely in the context of losses and the decision to close down. The concept of the long period duly appears elsewhere and there is no demonstration of long-run equilibrium, of $P=AR$ being greater than $MR=MC$, nor, save by the surplus and deficit concept of cross-subsidization, of the equilibria of price discrimination through the lateral summation of marginal revenue curves. Instead we have a rather old-fashioned and inconclusive discussion of value-of-service versus cost-of-service which contrasts uneasily with the level of knowledge previously assumed. The reversal of the economist's conventional approach has been used on page 34.

A Study of the Philosophy of International Law As Seen in Works of Latin American Writers

Reviewed by Leonard v.B. Sutton*

JACOBINI, H.B., A STUDY OF THE PHILOSOPHY OF INTERNATIONAL LAW AS SEEN IN WORKS OF LATIN AMERICAN WRITERS; Hyperion Press, Westport, CT (1979); \$18.50 (cloth); ISBN 0-88355-849-1, LC 78-20471; viii, 158 p.; footnotes, bibliography, index. Reprint of the 1954 edition published by Nijhoff, The Hague.

Professor Jacobini in this worthwhile small volume of 158 pages states what he has attempted to do, and what this reviewer believes he has achieved with precision:

The views on the philosophy of international law of most of the Latin American writers of the nineteenth century, and of selected representative writers of the twentieth century, have been outlined against the background of a general survey of the philosophy of international law since the fifteenth century, and in the light of an explanation of contemporary interest in this general topic. These writers were classified into the three categories of *positivist*, *naturalist*, and *eclectic*, the attempt having been made to give as exact a statement as possible of the position of each on the problem of the nature and sources of international law. (Emphasis added.)¹

Although he divides writers and thinkers in this field into positivist, naturalist and eclectic, the author recognizes that the terms have had varied meanings over the past five hundred years. He states, for example, that Grotius has been classified as an eclectic. Yet, Lauterpacht, "who is considered to be a naturalistic thinker, [is] really much more positivistic than Grotius"² by today's standards. What Professor Jacobini stresses is that the "ethos of the age in which the particular author lived . . . [has to be] . . . kept in mind"³ in analyzing his writings.

The author traces how theories of international law have evolved from the *naturalistic* concept of a supreme being decreeing what is right and wrong to the strict *positivistic* position that international law derives only from treaties, conventions, customs and general legal principles. He then demonstrates how in the nineteenth and twentieth centuries the

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1. H.B. JACOBINI, A STUDY OF THE PHILOSOPHY OF INTERNATIONAL LAW AS SEEN IN WORKS OF LATIN AMERICAN WRITERS 137 (Hyperion reprint ed. 1979).

2. *Id.*

3. *Id.*

idea became more widely adopted that treaties, conventions, and even many national laws are a combination of both naturalistic and positivistic concepts and, thus, are *eclectic*.

Many writers are cited who point out that the natural law concept of justice has and does permeate international law⁴ as well as national and local laws.⁵ The point is made that if a law is not "just," it not only will be rejected by humanity, but it will, in the end, be partially or entirely unenforceable. Some authors cited believe that treaties merely codify what is "right and just" from natural law. For example, Jorge Americano, a prominent Brazilian scholar, is quoted as stating: "Law . . . is a system of guarantees based on principles of justice."⁶

Professor Jacobini draws one conclusion from his research:

[T]hat facts, while of potential juridical value, only assume actual legal significance by virtue of recognition of their possession of that legal significance. This recognition is, of course, an *intellectual process by which man adjusts his legal rules to conform with his perception [at that period of history] of truth.* (Emphasis added.)⁷

Scholars who are classified as eclectic also came to the same conclusion as Professor Jacobini. For example, the Peruvian professor D. Ramon Riberyo is quoted as saying that international law "is the aggregate of rational rules and of positive institutions which govern relations of nations among themselves in peace and war and which have for their object the resolving of conflicts."⁸ (Emphasis omitted.)

Hildebrando Pompeo Pinto Accioly, a prominent Brazilian diplomat and writer, concludes that "[i]nternational law is valid because men have conscience"⁹ He also recognized, however, as do all the authors of his time, that the general principles of applied international law arise out of "the general principles of law, customs, and treaties and conventions."¹⁰ It is noted that Accioly, however, did not recognize all the sources of international law which article 38 of the Statute of the International Court of Justice acknowledges.¹¹

4. *Id.* at 90-104. For instance, the eclectic writers of the twentieth century espoused this idea. Sá Vianna stated: "The reason or basis of . . . [international law] is that the human race, although divided into various peoples . . . always has some unity . . . determined by the natural precept of mutual love and mercy" *Id.* at 92, citing M.A. DE SOUZA SA VIANNA, *ELEMENTOS DE DIREITO INTERNACIONAL* 23 (1908).

5. For further reading on the philosophy of natural law, see Schneider, *Books and Articles on Natural Law and Related Areas*, 14 *AM. J. JURIS.* 159 (1969). This is a bibliography of books and articles published on this subject by contemporary European writers.

6. H.B. JACOBINI, *supra* note 1, at 113.

7. *Id.* at 135.

8. *Id.* at 90. Jacobini is quoting from 1 D.R. RIBERYO, *DERECHO INTERNACIONAL PUBLICO* 7 (1901-1905).

9. *Id.* at 102. Jacobini is quoting from 1 H. ACCIOLY, *TRATADO DE DERECHO INTERNACIONAL PUBLICO* 14 (1945-1946).

10. *Id.*

11. Article 38 provides that the International Court of Justice shall decide disputes by

It is interesting to note that this book contains no direct reference to the distinction in Anglo-American law of acts or concepts that are *mala in se* compared with those that are *mala prohibita*. It is suggested by this reviewer that relating *mala in se* to natural law would help clarify the domain of *mala prohibita*.

Some reference is made in the book to the trend of the nineteenth and twentieth centuries of recognizing *individuals and even rebel groups*, not just states and public organizations, as subjects of international law. Major expansion of this concept since World War II is evidenced by the creation of official bodies such as the European Commission on Human Rights and the Latin American Court on Human Rights. One cannot fault the author, however, for not emphasizing that trend more fully since his study was first published in 1954, and much has transpired in that field since then. Today the idea of individual human rights and freedoms that was forceably pursued in the French and American Revolutions and partially enumerated in the Atlantic Charter¹² is a growing wave of the future. It is a wave which may inundate old concepts and ideas of sovereignty. Furthermore, the concept of individual human rights reflects what large numbers of the world's citizens think the future goals of mankind are or should be.

The book's final chapter discusses the existence *vel non* of American international law. It is pointed out that this is a concept personified by the Monroe Doctrine and which arose because of the distinctive problems, geography and cultures of the countries of the Western Hemisphere. Thus, although American international law emphasizes regional solidarity, it really is only a regional application of worldwide international law. Jacobini gives an adequate and interesting discussion of this idea, its history, and its proponents and opponents.

Finally, the book contains a comprehensive bibliography as well as an adequate index. These two listings provide easy access to places in the book where the works of the myriad authors and the documents are discussed.

The scope of the author's cited and quoted writers is impressive. Lawyers, jurists and professors from nearly all of Latin America are included, and the works of several centuries are examined. However, Professor Jacobini's ability to summarize their views succinctly and to draw conclusions from them is equally impressive. Reading the study should make English-speaking people cognizant of the fact that there are others in far away places who are perhaps even more erudite and thoughtful about the origins of mankind and where it is going than we fancy our-

applying international conventions, international custom, general principles of law recognized by civilized nations, and judicial decisions and teachings of the most highly qualified publicists of the various nations. I.C.J. STAT. art. 38.

12. Atlantic Charter, Aug. 14, 1941, United States-United Kingdom, 55 Stat. 1603, E.A.S. No. 236. This agreement sets forth the goals of the United States and the United Kingdom for the future of the world.

selves to be.

This study points out that the law is not static and that the concept of justice is ever changing. Both will continue to evolve because of man's unique nature, for man is the only creature with a conscience and the only creature able to rationalize, to think, and to dream of a better world.