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Book Review of World Peace Through Space Law

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BOOK REVIEW

WORLD PEACE THROUGH SPACE LAW. BY JEROME MORENOFF. Charlottesville, Virginia: The Michie Company, 1967. Pp. 329.

At the very beginning of this review, I must state that *World Peace Through Space Law* is quite different in content from what I had expected. "World Peace Through Law," a program to which the American Bar Association has been devoting considerable attention, is based on the premise that some sort of international law should be utilized to settle differences between nations, and that through the rule of law the age old desire of a world without war shall come into being. World peace is certainly a worthy goal, and to a generation which has participated in three wars, any book which conveys in its title or in its contents a hope for attainment of that goal is a matter of real interest. True it is, then, as Mr. Charles S. Rhyne points out in the foreword to Doctor Jerome Morenoff's book, space technology is moving forward by leaps and bounds, and "this technological revolution must be accompanied by a comprehensive examination of the rule of law to govern man and countries in their exploration of the heavenly bodies and their use of space." Mr. Rhyne, who as president of the American Bar Association conceived the idea of the World Peace Through Law Movement and who is presently devoting most of his energies to the duties of President of the World Peace Through Law Center, emphasizes that law is the only concept developed by the mind of man to control power among nations and to channel conflicts among nations into legal institutions for peaceful decision under legally established rules.

And so I was quite surprised to find in this book not a discussion of how, through treaties and through action of the United Nations, a system of international law has developed toward establishing the joint use of space by and for the benefit of all nations, but rather an extensive discussion of the history of espionage and aerial reconnaissance and a most comprehensive and scholarly reporting of the growth of international law in this area. Doctor Morenoff, in the preface, states that his book will evaluate a multitude of factors in order to select a reconnaissance system consistent with international law restrictions and what he conceives to be a need for "reliable scrutiny of nuclear powers"—a

system akin to President Eisenhower's "Open-Skies" proposal. The author advances the hope that what he calls an "Open-space" program may well provide "the first concrete basis for establishing World Peace Through Space Law."¹ I certainly don't intend even to intimate that this conception is an erroneous one; certain it is that facts are the grist for the mill of any legal system.

What I have said should not be taken as any indication that the book is not worthwhile. On the contrary, it is extremely informative. It is a book which any person interested in the development of aviation and aeronautics will enjoy reading. It traces the history of military aviation from the balloon to the SR-71 and then steps out into the area of the satellites. The book contains a most informative chapter dealing with recent reconnaissance activities and a prognosis for the future. The characteristics of the A-11 airplane, the successor to the U-2 mentioned later in this review, are set out, and the author has inserted a photograph of this Mach 3.5 long-range reconnaissance airplane.² After setting out the developments in overhead surveillance in recent years, the author says, "it may be that this will be the milieu in which reconnaissance shall continue to contribute to effective national security and serve as the implement of eventual disarmament and world peace."³

The student of military espionage will find much of interest in this book, which covers most of the source material available in this field. The history of the development of theories of national sovereignty in air space is set out in detail.⁴ It recounts the controversy, as yet undetermined, which has confronted space law scholars since Sputnik I shocked the United States into activity in this new realm—should there be some sort of line drawn to say for how far up above its territory a nation's sovereignty should extend?⁵ The author says that the majority of reputable scholars insists that an answer to this question is a prime necessity in the development of the law of space. The writer of this review may be neither reputable nor a scholar, but he has long found himself in the camp of those regarding the problem as insoluble and an answer to the question unnecessary. The universe moves too rapidly to enable us to say what is over what nation for any given length of

1. J. MORENOFF, *WORLD PEACE THROUGH SPACE LAW*, p. x (1967.) [hereinafter cited as MORENOFF].

2. *Id.* at 67, 68.

3. *Id.* at 71.

4. *Id.* at 17, 48.

5. *Id.* at 112, et sec.

time.⁶ At any rate, there is an excellent discussion of the many proposed boundaries for air space and outer space, and a conclusion by the author that "the difficulties of arriving at a viable solution are extensive," that "we are faced with a set of variables that are constantly in flux or are undesirable in some other way," and that "it may be that such a solution is impossible according to the systems presently under consideration."⁷ Thus, it would seem, the author almost joins the same camp of which this reviewer is a member.

Early in the book the author discusses the basic problems arising from reconnaissance flights in air space and in outer space in the belief that those who would formulate a body of laws directing man's activities in space need to have a comprehensive knowledge of progress made thus far in defining and regulating reconnaissance in air space. Perforce, much of the discussion in the book and most of the examples used involve differences in interpretations and approaches between the Union of Soviet Socialist Republics and the United States of America, the two nations having present capabilities in space. Doctor Morenoff states categorically that it is the basic contention of the United States that the very maintenance of its security is directly dependent on the reliability of intelligence concerning any possible opponent's military potential, and that employment of reconnaissance flights are elements of self-defense. The Soviet Union, on the other hand, regards reconnaissance as an act of aggression.⁸

The U-2 and RB-47 reconnaissance missions were initiated, according to the author, in lieu of President Eisenhower's "Open Skies" policy, which was proposed at the 1955 Geneva Summit Conference and rejected by the Soviet Union. This concept was proposed by the United States as the basis for ensuring peace through mutual aerial reconnaissance.⁹ The U-2 shot down over Russia on May 1, 1960, was ad-

6. See *The Space Age Legal Dilemma*, 1961 Senate Symposium 773.

7. MORENOFF at 159-65.

8. *Id.* at 15, 16.

9. *Id.* at 45, 46, 47. The plan presented by President Eisenhower to the Geneva Conference of the "Big Four," which provided for an exchange of military blue prints and the mutual privilege of aerial reconnaissance by the United States and the Soviet Union, is discussed in Note, *The Aerial Inspection Plan and Air Space Sovereignty*, 24 GEO. WASH. L. REV. 565 (1956). This note considers, as does Doctor Morenoff, a disarmament or peace keeping program through aerial inspection, and contains an analysis of various theories of air space sovereignty and the influence of national security and national economy factors which have resulted in general recognition of the sovereignty doctrine.

mittedly invading Russia's sovereign air space for more than four years before the Soviet Union developed the capability of shooting it down. The RB-47 was shot down by a Soviet fighter some two months later while on a reconnaissance mission over the Barents Sea. Both were photographing Soviet installations.¹⁰ The author very aptly points out the differences in the issues involved.¹¹ The taking of photographs, the spying if you will, was not considered wrong under international law, but the invasion of the sovereign air space was considered wrong. When outer space became the area utilized through Project MIDAS and Project SAMOS, the author points out the new divergence; the Russian viewpoint that acts of foreign intelligence conducted in outer space are just as wrong as acts of foreign intelligence gathering conducted in the air space, and the United States view that "intelligence observations, although illegal when conducted within the boundaries of a country, are not restricted by law when conducted from outside the boundaries of a nation."¹²

One of the extremely interesting features of the book is its fascinating and graphic descriptions of early and elementary aerial photography which are discussed among the early experiments in aerial reconnaissance. This book tells about the use of balloons for reconnaissance purposes in the Franco-Prussian War and the American Civil War, and the advent of the airplane into the reconnaissance arena during World War I.

The concept of sovereignty in the area of reconnaissance is treated in depth. The historical development of this concept is related from its beginning with the Roman Code concept of absolute jurisdiction over everything above and below the soil, through the Paris Convention where, says Dr. Morenoff, the free air theory was repudiated once and for all.¹³ The author also sets out clearly the accomplishments of the many international air conferences and conventions over the last fifty years.¹⁴

He then discusses sovereignty considerations of reconnaissance from

10. *Id.* at 17.

11. *Id.* at 19.

12. This subject is dealt with at length in sub-chapters discussing sovereignty considerations of reconnaissance conducted from the air space superjacent to the high seas. *Id.* at 129-51. Here the author in a most informative manner discusses legal implications in surveillance activities on interior maritime waters, the territorial sea, contiguous zones, and the high seas, as well as in the air space superjacent to each.

13. *Id.* at 111.

14. *Id.* at 112.

outer space. Technical descriptions of air and atmosphere and the component parts thereof—troposphere, stratosphere, mesosphere, ionosphere, and exosphere—are examined.¹⁵ He sets 100,000 kilometers as the outer limit of the atmosphere and describes the Van Allen Belts which are mentioned so often in considering requirements for the journey to the moon contemplated in our Apollo Program.

Perhaps I have not made it clear that this book will be of real interest to the student of international law. The author discusses how such law develops and shows how custom as a transmitter of international consent is of supreme importance in the evolution of the law of space. For instance, the author points out that free access to space for scientific and peaceful purposes became accepted because no nation objected to use for such purposes, and he quotes Mr. John Johnson, former general counsel of the National Aeronautics and Space Administration, to the effect that the lack of objection to satellites passing over the sovereign territory of most states is indicative that nations do not regard sovereignty as extending as high as the altitude at which satellites are orbiting.¹⁶ The author attributes what we have in the law of space to evolution of customary international law and observes that there are virtually no formal agreements encompassing principles in the use of outer space. This observation, it is submitted, is quite obsolete. In the introduction of his book, Doctor Morenoff mentions certain resolutions adopted by the General Assembly of the United Nations, including Resolution 1962 (XVIII) setting general *Legal Principles Governing Activities in Outer Space* (1963), Resolution 1963 (XVIII) dealing with *Peaceful Uses of Outer Space* (1963), some of the preliminary resolutions establishing committees to consider problems of outer space,¹⁷ Resolution 1721 (XVI) setting forth basic legal principles which should govern use of outer space (1961), but he does not accord to them the importance which this reviewer thinks they should have in the establishment of space law. True it is that Doctor Morenoff mentions some of the agreements reached through United Nations activity.¹⁸ It would seem, though, that these resolutions, each representing a formal consensus of the world family of nations, have been considered generally as international recognition of the freedom of outer space and of the principle that celestial bodies, while free for exploration and use by all states,

15. *Id.* at 153-55.

16. *Id.* at 174.

17. *Id.* at 2, 3.

18. *Id.* at 178-86.

are not subject to national appropriation. Resolution 1721 (XVI) "set forth essential legal principles applicable to outer space in a manner unprecedented in the entire history of exploration by man."¹⁹ United Nations Resolution 2130 (XX) on *International Cooperation in the Uses of Outer Space* (1965) urged the Committee on the Peaceful Uses of Outer Space "to continue with determination the preparation of draft international agreements on assistance to and return of astronauts and space vehicles and on liability for damage caused by objects launched into outer space, and to give consideration to incorporating in international agreement form, in the future as appropriate, legal principles governing the activities of States in the exploration and use of outer space."²⁰ Based on this background, President Johnson, on May 7, 1966, proposed a treaty on the exploration of the moon and other celestial bodies, and on June 16, 1966, Ambassador Goldberg transmitted the text of the United States draft treaty to the Chairman of the United Nations Committee on the Peaceful Uses of Outer Space. It is of supreme importance to any discussion of World Peace Through Space Law to consider that on June 16, 1966, the Union of Soviet Socialist Republics filed a draft treaty which was in substantial agreement in most areas with that presented by the United States.²¹ It is even more significant that by December 8, 1966, substantial differences between the United States and the Union of Soviet Socialist Republics were ironed out by cooperative and understanding negotiation and announcement was made of the Treaty. It consists of seventeen articles, was signed in Washington, Moscow and London on January 27, 1967, by sixty states, and on April 25, 1967, it was ratified by the United States Senate by a vote of 88 to 0. It would not be appropriate to set forth the contents of the Treaty here; the interested reader can readily secure the treaty or read a summarization of it in Mr. Berger's article previously cited. It is appropriate, though, to say that the Treaty covers many problems in the utilization of space, to mention that a Treaty Banning Nuclear Weapon Tests in the Atmosphere, in Outer Space, and Under Water was signed by the United States and the Union of Soviet Socialist Republics on August 5, 1963, and by many other nations thereafter,²²

19. Harold Berger, *Background Aspects of a Treaty Governing the Exploration and Use of Outer Space*, 38:3 PA. BAR ASSOC. Q. 320.

20. Staff Report, Committee on Aeronautical and Space Sciences, United States Senate, July 1966.

21. Berger, *supra* note 33 at 322-23.

22. Staff Report, *supra* note 34.

and that the author's observation that there are virtually no formal agreements encompassing principles in the use of outer space is no longer tenable. It is hard to understand why such an observation should be made in a book containing such careful and extensive research as does this one when the copyright date is 1967. The ability of the two great nations to work together, to give and take, and to reach agreement on important matters is a most important ingredient in the formula for World Peace Through Space Law. That the nations of the world can and will work together in this new adventure is demonstrated by the many joint activities conducted during the International Geophysical Year and in the success of many of the international organizations established in connection with space programs. Full and exclusive reliance on the development of customary law in dealing with space problems is fraught with many difficulties.²³

Even though the treaty provides that outer space shall be used only for peaceful purposes and prohibits placing in orbit or installing on celestial bodies objects carrying nuclear weapons or other weapons of mass destruction, establishing military bases or fortifications, testing of weapons, or conducting military maneuvers on celestial bodies, Doctor Morenoff's consideration of what constitutes a peaceful use is of real current interest; the nations have not yet reached complete agreement on what is or is not a peaceful use when reconnaissance satellites are involved.²⁴ It may well be, though, that this difference will be laid to rest, as suggested by the author, now that the Soviet Union has openly admitted to having reconnaissance satellites of its own.²⁵

As has been indicated before, espionage, aerial surveillance, and reconnaissance provide most of the frame against which this book is set. The history of these subjects is approached from a slightly different angle through discussion of reconnaissance and crimes under international law. In this context, Doctor Morenoff furnishes an excellent history of international crime and the evolution of international morality and international law. He tells us about the new concept of war crimes which culminated in the War Crimes Trials in Germany and in Japan after World War II, and shows why reconnaissance was traditionally categorized as a crime of aggression by the Soviets²⁶ while the United States consistently labeled it a defensive act necessary to insure the

23. MORENOFF, at 156.

24. Morenoff, at 186-96.

25. *Id.* at 205.

26. *Id.* at 191-99.

world against surprise attack and contended that surveillance is not an attack and hence is not aggression.²⁷ In returning to consideration of the SAMOS, MIDAS and DISCOVERER satellites in the espionage and crime context, Doctor Morenoff clearly shows the validity of the contention that because these activities are not clandestine, they are not espionage.²⁸ It is not clear to this reviewer, then, why the author states that all reconnaissance can be considered violative of international law as it conforms to crimes against security,²⁹ unless he makes this statement as the basis for discussion of "Reconnaissance as a justifiable activity in the development of World peace through space law," the title of one of the parts of his book. Having said that, I hasten to add that if he needed the statement as a vehicle to lead into this field, this reviewer is not sorry he made it. His discussion of the doctrine of anticipatory self-defense and his views concerning the evolution of this doctrine as necessitated by advances in the "Nuclear Age" is most interesting.³⁰ Few will disagree with Doctor Morenoff's conclusion that "in view of the ever-present possibility of sudden devastation, it is a fact that nations can no longer wait for an armed attack to occur to defend themselves. Such defense would be useless and ineffective. Therefore, reconnaissance as it is used against this threat may be justifiable under the doctrine of self-defense."³¹ Doctor Morenoff gives consideration to sort of a computerized evaluation of when reconnaissance becomes self-defense in response to a threat to security, and his outline of such proposal will intrigue all but the most skeptical in this age of thinking machines. He has covered the entire gamut of factors for consideration and suggests various weights for various factors.³² Following the intricate paths of his various programs might well furnish an evening's entertainment for the devotee of computer logic. For those to whom computers are still in the area of the mysterious and not understood, this exercise can be omitted without any detraction from the informative parts of the book.

At the close of his book, the author makes a good case for a cooperative system of surveillance under an open skies inspection program by which the most effective and least expensive methods at hand may be

27. *Id.* at 200-02.

28. *Id.* at 208.

29. *Id.* at 215.

30. *Id.* at 221-35.

31. *Id.* at 236.

32. *Id.* at 238-89.

used for the benefit of all. Because former Premier Khrushchev, as early as May 28, 1964, publicly admitted that the Soviets have "spying satellites" of their own, "strongly implied that they have photographed American military bases with excellent results," and suggested substitution of satellite surveillance for aerial reconnaissance over Cuba, Doctor Morenoff seems to feel that there is now a possibility for such a cooperative enterprise.³³ He suggests that the United Nations would be the most suitable organization to operate it with funds contributed by the entire community of nations, and he is convinced that a "United Nations Reconnaissance Agency" could make real contributions toward the ultimate attainment of world peace.³⁴ And this is a conviction with which this reviewer concurs without reservation. Similar suggestions concerning United Nations supervision have been advanced by other authors in the implementation of what has been called "the present world drive for substitution of the force of law for the law of force," for instance, a permanent United Nations Astronautical Agency to regulate the use of space, including a reconnaissance satellite peace patrol, and the use of the International Court of Justice for settlement of all international disputes arising out of the use of outer space.³⁵

This is a book which is well worthwhile. If it has shortcomings in the organization of the material and in repetition, these shortcomings are over-balanced by the wealth of information it brings to the reader. This reviewer is glad to have made its acquaintance. It may well be that world peace can be found through space law, through suggestions made by the author and through experiences of the nations in working together in this new realm. It is hoped that there is prophecy in what the speakers said on January 27, 1967, during the White House ceremony marking the signing of the Treaty governing the use of outer space. President Johnson, in his remarks opening the ceremony, stated that the Treaty

. . . holds promise that the same wisdom and good will which gave us this space treaty will continue to guide us as we seek solutions to the many problems that we have here on this earth.

Ambassador Dean of Great Britain stated:

33. *Id.* at 292-98.

34. *Id.* at 299-303.

35. Brigadier General Martin Menter, USAF, *ASTRONAUTICAL LAW, 1961 Senate Symposium on Legal Problems of Space Exploration*, p. 349.

We all take today an important step towards our ultimate goal: The creation of a world in which men can live together in harmony, free from the fear of war.

Ambassador Dobrynin of the U.S.S.R. stated:

We believe that the treaty we are signing today will be an important step in further development of cooperation and understanding among states and peoples, and will contribute to the settlement of other major international problems facing humanity here on this planet.

Ambassador Goldberg read a message from the UN Secretary General, U Thant, in which the Secretary General stated:

I have no doubt that this treaty will not only greatly reduce the danger of conflict in space, but also improve international cooperation and the prospects of peace in our own planet.

In the single decade since Sputnik I, mankind has made great progress in extending the rule of law into outer space, but much remains to be done. Doctor Morenoff, in this book, helps to point the way.

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