

BOOK REVIEW

Deux Frontières Invisibles : De la Mer Territoriale à l'Air « Territorial »

By Nicolas Mateesco Matte, LL.D., Paris

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1965. Pp. 294. No price given.*

The technology of the mid-twentieth century enables man to penetrate the depths of the sea, the air envelope surrounding the earth and the far reaches of outer space. But the legal rules applicable to this technology are still incomplete in relation to the air and the sea, while, in relation to outer space, they are, at best, fragmentary. In his new book, Professor Matte examines these legal rules, existing and potential, in relation to the territorial sea and — as he calls it — “territorial” air. Why does he take these two subjects for treatment in the same volume? He answers this question in the introduction, thus: “. . . if we have thought it useful to join the air and the territorial sea in a same study, it is particularly because each one encounters the common difficulty of obtaining recognition as having a universally accepted status as to the extent of jurisdiction of the subjects of international law (individuals, States and international organizations)”.

Professor Matte's past writings on the law of the sea, the law of the air, and space law, have given him the background necessary to explore the legal concepts underlying all three milieus.

The first part of the volume is concerned with the historical evolution of the international law of the sea; the territorial sea, the contiguous zone and the high seas; the seabed and subsoil; the exploitation of the natural resources of the sea, and problems posed by the continental shelf. Here Professor Matte points out that the natural resources of the sea and the problems posed by the exploitation of the continental shelf establish a special sovereignty in favour of the adjoining State (p. 78). Later, he submits that States have over the territorial sea, the contiguous zone and continental shelf, only a functional jurisdiction which they will have to define, from time to time, by understandings and conventions (pp. 234-235).

The author then proceeds, in the second part, to define "territorial air", first of all discussing the "air milieu", as he styles it, in a familiar historical context. In discussing the horizontal extension of territorial air (i.e., its extension outwards from the coast), he examines, *inter alia*, the air milieu over territory of undetermined sovereignty, the territorial sea, the contiguous zone and the continental shelf. He considers the question of a special contiguous zone in terms of safety zones and identification zones and the justifications proposed for them. While he admits that there is multilateral acceptance of an aerial contiguous zone for the purpose of ensuring the safety of air traffic (and here he refers to Annexes 2 and 11 to the Convention of International Civil Aviation), he feels, on the other hand, that the unilateral extension of the jurisdiction of certain States beyond the territorial air milieu, for reasons of military security, constitutes a much-debated legal question (p. 155).

The third part of the volume deals with the vertical extension of air space (i.e., upwards from the earth's surface). This question is studied in the context of the current debate as to where air space ends and outer space begins. The various theories — and they are many — are neatly categorized in brief compass with references to relevant literature of which volumes have appeared starting with a trickle in the early nineteen-fifties and followed by a torrent after the flight of Sputnik I in October 1957. Professor Matte concludes that no attempt should be made to draw a boundary between air space and outer space and that a single legal regime should apply up to the heavens, although the rights and obligations of States would differ according to the objective of the aircraft or spacecraft. This is a functional solution which considers air space and outer space as a single unit and according to which rights and obligations would be defined, not according to *a priori* scientific divisions of space into air space and outer space, but in accordance with the functions and activities pursued by States in all space from the surface of the earth upwards (pp. 212-226).

Professor Matte is opposed to the "balkanization of the air" and considers "that it is incomprehensible to speak with such optimism of a law of space, and of the freedom of movement in space, as opposed to air law" (p. 238). He calls for the replacement of "the anachronistic principles of absolute sovereignty in the air by more extended functional state jurisdictions" (p. 240). Finally, he insists on the necessity of an "Aerospace law of navigation" and poses the corollary of the impossibility of a "territorial" air (p. 240).

The volume contains the texts of the Conventions and Protocol on the Law of the Sea adopted by the Geneva Conference on the Law of the Sea (1958), an index of authors and cases cited, a useful bibliography and a table of contents.

Professor Matte is to be congratulated on a courageous presentation of a thesis which, though it may not meet with universal acceptance in a world immersed in the concept of State sovereignty, will nevertheless give food for thought to those engaged in formulating the law of the sea, the law of the air and space law.

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