THE PRINCIPLES AND PRACTICE OF INTERNATIONAL AVIATION LAW

By B F Havel and G S Sanchez


Not just an exemplary introduction to air law and an exceptionally comprehensive summary of the main principles, Havel and Sanchez's book is to be welcomed for at least two further reasons. First, it puts air law in context — as the title of the book suggests, by explaining the historical background and contributing forcefully to the debate on current progress and developments. Not only is the law being explained but the work will be of immense practical value to practitioners. Secondly, the work is not just an illuminating summary but is an invaluable critique, and the force of polemic greatly enhances the reader's enjoyment, as well as his understanding.

Further, as Prof Pablo Mendes de Leon very aptly puts it in his recommendation, Havel and Sanchez represent a 'Chicago school' of aviation law reminiscent of the Chicago school of economics. It is the interdisciplinary treatment of the law, it is the highly developed understanding of the significant functional economic purpose that the law serves in the aviation field, that again makes the work far more interesting than a standard textbook and far more interesting to read. I venture to suggest that not many aviation law books have previously included an enlightening section on the 'Law and Economics' movement of the 1960s and 1970s, and International Paretianism, which is to note sections that not only explain the law but illuminate why we lawyers are in the aviation business in the first place. Chapter 1 ('What is International Aviation Law?') is a tour de force on this topic. What Havel and Sanchez put clearly — and convincingly — throughout the work is that the current state of aviation law is holding back the development of international aviation as a business. This is a highly significant political point, and I believe they are right that the stakes are high: international aviation contributes hugely to globalisation and (let's be so bold as to say it) to world peace, and anything that hinders it is of macro-economic significance.

Turning again to my introductory points — context and polemic. Nowhere in the book is the value of these better exemplified than in Chapters 3 ('The International Law Regime for Trade in Air Services') and 4 ('The International Law Regime for Airline Investment and Global Alliances'). Readers familiar with Prof Havel's previous work on Open Skies will enjoy his demolition of what he aptly in a memorable metaphor calls the 'double lock' of the nationality rule in bilateral air transport agreements and the ownership and control rules imposed on their carriers by many countries (including the EU, which provides in Reg 1008/2008 that EU carriers must be majority owned and controlled by EU nationals). Havel and Sanchez make all of their points in a very convincing manner. This is not to say that the educational value is lost in the polemic, as it is not. Far from it — the summary of the freedoms of the air, for example, is exemplary and should be rote learned by every air law student (and practitioner...).

Open Skies is one of Prof Havel's big themes and his enthusiasm for it leads to some repetition in Chapters 3 and 4 but this is to quibble. Incidentally, as readers of Prof Havel's previous books will be aware, one of his strengths is illuminating footnotes, and again his skill is on display here — the footnotes add fascinating material for those who wish to delve further, without disrupting the flow of the main arguments and instruction. It is here that the reader will find many extremely helpful economic facts (for example, air transport accounts for nearly 50% of ExIm Bank's exposure) and elucidation on points of considerable practical importance e.g. which bilateral air transport agreements permit cabotage in the other contracting state.

The same can be said of the chapters on safety, the environment (including a very succinct summary of the EU ETS and the legal and political arguments surrounding it) and air carrier liability. With regard to the last, the historical/teleological approach proves invaluable in enhancing the readers' understanding of why the liability regime has arrived at its present disparate form, and the summary of the Montreal system, are models of clarity. The reader seeking instruction on these topics, or a refresher, would be hard put to find better elsewhere.

It is refreshing to find in an aviation law book a chapter on aircraft financing, though in 55 pages the authors only have time to spare to touch the surface of this immensely wide-ranging and convoluted topic. Perhaps wisely they focus on four areas where public international air law has interlinked most recently with private international air law, and again their summaries of these are highly recommended — the infamous Blue Sky case, the Cape Town Convention, subsidies to aircraft manufacturers and export credit support. There are many other topics that could be covered but the authors wisely leave these to other textbooks, most of which treat the topic on a jurisdiction by jurisdiction basis. I think it likely that the main reader of this book from the finance/leasing perspective will be an aviation finance lawyer who seeks to enhance his understanding of aviation law in its wider context (the Chicago Convention, the Freedoms of the Air and the bilateral system, investment and alliances, safety and security, the environment, air carrier liability) rather than (for example) an aviation regulatory lawyer who seeks further knowledge on finance.

It seems carping to offer criticism, but — perhaps...
intentionally — there are gaps. The whole subject of passenger rights is perhaps the most obvious, which is disappointing given its developing importance in the EU in particular. It is very surprising that the hugely significant EU Regulation 261 is dealt with in a footnote of less than a page, especially given how much litigation has already arisen from this highly controversial Regulation (and interesting litigation that in that it constitutes an example of the CEJU expanding the law by itself). Competition lawyers may be disappointed, as the topic is mainly touched on in the context of antitrust immunity for global alliances. Especially disappointing is the short section on state aid, which is a highly relevant topic in the context of the rise of sovereign wealth-backed Middle Eastern hub-based carriers, and the absence of any discussion of price fixing. Airport issues are not touched on (for example, state aid in this context going back to the Ryanair/Charleroi case).

If finance/leasing is to be included, then there is a good argument for including a summary of aviation insurance (noting however that the latest edition of Aviation Insurance by R D Margo runs to over 800 pages). Standard aviation law courses would deal with the powers of such bodies as EASA and Eurocontrol. But all this is to quibble almost for the sake of it.

There will always be other texts which treat a particular subject in more depth. The strength of Havel and Sanchez's book lies in its authoritative treatment of a wide variety of subjects germane to international aviation law in a manner that is interesting, forward-looking and innovative and its skill in imparting knowledge by looking at the historical background and the context. There are very few books in the aviation law world that would deserve the fiction cliché of 'a page turner' but this is one of them and it cannot be recommended highly enough.

Peter Jones, an eminent political scientist and former Canadian Arms Control Negotiator, has written an absorbing book of scholarship covering the history of Open Skies from the time it was first proposed by President Eisenhower in 1955 to the present day. The story is a complexity of politics, bureaucracies, vested interests and technical challenges. It is thus fortunate that the account is well written and comparatively easy to follow. The chronological structure, with wide-ranging notes and a good index, leads both experts and the less-informed comfortably through to the end. In addition, it contains a valuable bibliography for those thirsting for more data.

This intriguing book reveals how political changes, following the imminent demise of the USSR and the Warsaw Pact, led to renewed interest in Open Skies for building trust and to validate treaties such as Conventional Forces Europe [CFE] and control and reduction of Weapons of Mass Destruction [WMD]. It also exposes that, despite technical limitations imposed upon the Open Skies overflights, current National Technical Means [NTM] with sophisticated surveillance satellites, plus widely available imagery from civil remote sensing satellites do not invalidate the importance of conventional overflying aircraft, which provide, inter alia, the best means of air sampling — central to the control of WMD.

The author attributes the fulfillment of the Open Skies treaty to a top-down approach — when President George H W Bush and Mikhail Gorbachev instructed their somewhat reluctant bureaucracies to get on with it. These directives were strengthened by stimulus provided by Canada [NATO] and Hungary [Eastern Bloc] hierarchy.

The concluding chapter argues that Open Skies still has a major part to play in CBM and WMD control and, with top-down leadership and serious participation by more nations, the treaty can be updated and hence should flourish.

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Peter Aston.
The Story of the Skylark
By R H Brand

Skylark was fortunate in that both the scientific community and the defence community needed answers to problems. The Treasury was persuaded to support the development and use of an atmospheric sounding rocket and the result was a very successful project. It was fortunate also that the range at Woomera, in Australia, was available and willing to host the great majority of launches and had the great benefit of recovery on the ground of the results of launches.

As with most exploration of scientific mysteries, not all the experiments worked but enough of the 441 launches did work to justify continuing. Robin Brand’s book lists all the launches and details the results of all but a handful for which records are not available. The experiments are described in fairly simple terms and there are references to full reports. It is a massive book — too heavy, at nearly six pounds (2·6 kg), for bedtime reading — but wherever you open it there is something interesting about the rocket, the experiments, the range, or some political or technical background. There are lots of photographs and the notes are unobtrusive and helpful. The index, the references and the bibliography are all good.

The pressing scientific reason for Skylark was to measure the ultra-violet and X-ray emissions from the Sun. No X-rays reach the ground and not much of the UV either. In 1953 there were no satellites and no micro-circuitry. Also there was a wish to know about the atmosphere and its winds and the ionised layers. Defence scientists saw that long-range rocket designers needed to know a lot more about the conditions more than 50 miles above the ground. Later, as Skylark’s capabilities developed, it was found that UV and X-ray measurement and spectroscopy could be done on radiation from individual stars and galaxies. The height reached increased from an initial 100 miles to 533 miles — with a three-stage version. Microgravity experiments up to 15 minutes could be achieved. Specifications for equipment on a sounding rocket were less demanding than on satellites because of the much lower cost of launch and the fact that humans were not on board. The time from conception to launch was much shorter. The rocket was unguided but the instrument package could separate from the rocket and more and more sophisticated attitude controls were developed, as well as parachutes for recovering the instruments and records.

The author starts with a brief history of military rockets, up to V-2, and then outlines the political decision and the technical development, which was at the Royal Aircraft Establishment, Farnborough, and the Rocket Propulsion Establishment, Westcott. A list of all the launches follows with interesting comments about contemporary events concerning other rockets which affected launches of Skylark. Apart from Woomera there were launches from Aberporth, Norway, Sweden, Brazil, Spain, Argentina and Sardinia. The Royal Society was the scientific instigator of the programme and universities in Britain, Germany and other countries, NASA and ESRO (European Space Research Organisation) provided or sponsored experiments. The Government department concerned with defence was the Ministry of Supply.

Anyone who is going to do some experiments involving rockets and scientific equipment will learn all the reasons why an experiment can fail but also be encouraged that problems can be overcome. There are fascinating narratives about the problems of recovering equipment that landed downrange at Woomera and the local fauna there — galahs, kangaroos, mice, flies — and, of course, the weather. I spotted about a dozen small typos and one technical slip, which is pretty good for a book of this size.

Altogether an excellent read, well produced, at a surprisingly low price.

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