

BOOK REVIEWS

SPACE LAW. By G. Gal. Dobbs Ferry, N.Y.: Oceana Publications, Inc. 1969. Pp. 320. **THE LAW RELATING TO ACTIVITIES OF MAN IN SPACE.** By S. Houston Lay and H. J. Taubenfeld. Chicago: The University of Chicago Press. 1970. Pp. 333.

The literature of space law has recently been augmented by two important books. Dr. Gal in 1968 completed his revision of the 1963 edition of *Space Law*. His ongoing familiarity with the legal aspects of space has provided the perspective from which it has been possible to observe significant changes in this field of law. From his vantage he has sought to grasp the transition from the earlier speculative searchings for general principles of space law to the increasingly formal identification of specific rules. Regrettably he has not entirely met this challenge, for the present book is more of a factual updating of the earlier edition than a reexamination and a rewriting of the more analytical and substantive portions of the original text. This has resulted in unexplained ambiguities and contradictions which have deprived the new edition of the qualities of internal consistency and logical symmetry.

While a book on space law must take suitable account of the historical facts and speculative doctrines which have contributed to the emergence of today's maturing body of law, the larger present need is to indicate how such facts and doctrines have been affected by the current conditions imposed by the scientific and technological age and by the politics of such an age. Hence, any perceptive analysis must take into account such social complex forces as the role of world institutions, the relevance of individual and group political and social values, and the impact of such specific forces as science and technology, the nuclear capabilities of States, the world's environmental erosion, the population explosions of peoples and nations, and the exponential changes of our times.

Such an approach, for example, would afford policy insights for the author's otherwise technically acceptable identification of the several theories dealing with the demarcation of the boundaries of air space and outer space. Lest it be thought that it is not the function of space law writers to provide theoretical and practical

reasons for the development of space law principles, it should be noted that Dr. Gal has offered on numerous instances—quite frequently in the form of off-hand and unsupported comments—his own policy preferences. Perhaps this last mentioned weakness could have been avoided through the adoption of an adequately identified and consistently pursued policy viewpoint regarding the direction which this emerging law ought to take.

The author has enjoyed an influential position among space law writers. Nonetheless, a number of specific observations are in order. Unlike many commentators who have ascribed substantial legal significance to decisions of the U.N. Committee on the Peaceful Uses of Outer Space and to the unanimous space resolutions of the General Assembly, Dr. Gal has adopted a narrow view of the form which international law may take. Through his preoccupation with the need for positive forms of international law he unfortunately has failed to recognize adequately the importance of customary practices and law in this field. Further, his interpretation of the “security theory” relating to a boundary between sovereign air space and non-sovereign outer space stresses the needs of the “State,” rather than the more essential needs of the human beings who presumably are entitled to be served by such an entity.

Additionally, he does not analyze the changes which have taken place between the 1958 proposal by the Soviet government that the space environment not be used for “military” purposes with their present formal acceptance of the view that such an environment must be used exclusively for “peaceful” purposes. The result is to obscure the Soviet retrenchment from their earlier verbal position. Thus, this author, along with some other writers, fails to acknowledge that a military use of the space environment—unless it falls under the specific prohibitions of paragraph 2 of Article 4 of the 1967 Treaty on Principles Governing the Activities of States on the Exploration and Use of Outer Space—may be perfectly peaceful. It should be noted that to this date such uses have, in fact, been entirely peaceful.

The author’s apparent assumption that a closed society can exist in the modern world, despite the fact of the electronic revolution and its impact on space capabilities, has gotten him into the predicament of assuming and asserting that space reconnaissance in some way constitutes a violation of national sovereignty. This leads him to the further view, equally mistaken, that such recon-

naissance is a prohibited form of conduct despite the general practice of the resource States in engaging in such activities. Moreover, he assumes that the collection of space intelligence in a nuclear world, where no State can profit from the initiation of a first strike, constitutes a greater danger than the national security which results from the knowledge that a State is not engaged in readying itself for this form of warfare.

While the author, most commendably, has examined a very wide bibliography containing writers from many areas of the world—including probably more than most other writers the works of Soviet and Eastern European experts—this revision has not examined a vast portion of the substantial literature which has been published since 1963. Such literature is often relevant to a current appraisal of the theory of space law as well as its identifiable principles and its emerging rules.

With the entry into force of the 1967 Treaty on Principles the need for clarity in the use of the terms “outer space, Moon and other celestial bodies” has become essential. The author suggests at page 188 that “the term outer space is being increasingly used to denote space exclusive of the celestial bodies.” In view of the language of the Treaty and the views just quoted, the question has arisen as to the extent of the coverage of this agreement. If certain of its Articles are to be limited in their operation to Gal’s “space exclusive of the celestial bodies,” even assuming that the Moon is included within the context of “celestial bodies,” certain substantial difficulties will certainly arise. Would, for example, the provision of Article 2 which provides that no State may appropriate “outer space, including the Moon and other celestial bodies” be consistent with Article 4 which merely provides that “The Moon and other celestial bodies shall be used by all States, Parties To the Treaty, exclusively for peaceful purposes?” Could Dr. Gal argue on the basis of such language that “outer space” is exempt from the requirement of exclusive peaceful use and purpose? I think not. First, Article 13 provides that “The provisions of this Treaty shall apply to the activities of States, Parties to the Treaty, in the exploration and use of outer space, including the Moon and other celestial bodies. . . .” Second, the entire history of space activity as reflected in the consistent practice of States, including outer space, the Moon and other celestial bodies, has been clearly identified with the view that this space environment is to be used exclusively for peaceful purposes. Thus, the author’s

rather casual comment respecting the term "outer space" creates an erroneous impression.

The recently published book of Professors Lay and Taubenfeld affords a comparison on the basis of methodology, substance, and perspective with that of Dr. Gal. Like Dr. Gal these authors have made substantial contributions in the past to the literature of the space environment. Like Dr. Gal they have been influenced by space age situations which involve wide-ranging political and social, as well as traditionally narrower, legal considerations. Like Dr. Gal they have brought to their analysis a great variety of current materials. And, like Dr. Gal, their work, which deals with vitally dynamic issues and problems, will require reconsideration over time. It is the nature of this field of law and related interests that its issues and problems, including potential solutions, cannot remain constant.

Professors Lay and Taubenfeld have probed deeply into a variety of relevant space environment topics. In the course of their analysis they have examined the material processes and the essential purposes whereby national and international law have been accepted as pertaining to man's space related activities both on the surface, in air space, and in the space environment.

The Law Relating to Activities of Man in Space places principal focus on man's freedom to use and explore the space environment for the peaceful purposes of the entire community. Of course, any freedom, this one not excluded, is by the very nature of things not unlimited. Attention is suitably drawn by the authors to a variety of present issues and problems, including security needs and interests. Their analysis follows a middle course and is not overdrawn either in the direction of world community or narrowly nationalistic expectations.

This volume offers the scholar a detailed analysis of the essential principles and policies involved in the transition from the general principles of space law to the more particular rules. Its essential contribution will be to hasten that transition. In sum, this book makes an impressive case for the view that legal order will be central to man's prospects in the space environment. The vast scope of his space interests will require the effective utilization of all available legal concepts, international institutions, and informed policy judgments. This book helps to point to the processes and procedures available in the achievement of desired

goals. It also will be a valuable research tool since it includes a formidable series of appendices and an extended bibliography.

Both books signify the fact that space law is maturing. They attest to the sound conclusion that certain fundamental principles have received the essentially universal respect of the members of the United Nations. The community interest of most States in achieving universal acceptance of more detailed prescriptions is making good progress. While nationalistic points of view will continue to be advanced, it may be hoped that this emerging area of law will continue to advance community goals. Judging from all relevant developments it is correct to assume that a community oriented outcome is perfectly feasible.

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WAR BETWEEN RUSSIA AND CHINA. By Harrison Salisbury. New York: W.W. Norton and Company, Inc. 1969. Pp. 224.

Harrison Salisbury's *War Between Russia and China* is a very readable account of mounting tensions between the two states that may well lead to catastrophic total war.

Salisbury is not the only observer of foreign affairs to anticipate the possibilities of conflict. Raymond Cartier, the well known French commentator, writing a forecast of the seventies for *Paris Match* said,

If the escalation of the sixties continues to develop in the course of the seventies, the year 1980 will see China and Russia at the brink of war, if not beyond it. The only reason one is led to doubt it is the refusal to believe it. But all the positive factors are in the sense of the aggravation of the conflict.

Communism is a secondary consideration in the Chinese phenomenon. The essential factor is the awakening of China. If a young Chiang Kai Shek should upset tomorrow the old Mao Tse Tung, the Chinese menace will be only slightly diminished, and may even increase. Pride and Chinese racism have become the greatest explosives of our times.¹

Moreover, in a first of the year issue the highly intellectual Italian weekly *L'Espresso* quoted Brzezinski, the American Kremlinologist, who was formerly with the Policy Planning Board of the Department of State, as saying that in the beginning seventies the chances of the Russians taking the initiative are one in four, but that by the end of the decade the initiative may pass to the Chinese. At that time the odds will be, according to Brzezinski, one in two. He elaborates the latter prophecy saying,

If the Russians before then have not utilized to their advantage their thermonuclear superiority, almost certainly the eventual attack will come from the side of the Chinese who, strong in atomic armament, will decide to employ as well the superiority that the geographic situation and the number of soldiers can give it.²

1. *Paris Match*, No. 1078, page 70, Jan. 3, 1970 (author's translation). Among the other books on the Sino-Soviet crisis are G.F. Hudson, R. Lowenthal and R. MacFarquhar, *The Sino-Soviet Dispute*, Oxford (New York, 1962); and J. Gittings, *Survey of the Sino-Soviet Dispute*, Oxford (New York, 1968).

2. *L'Espresso*, Anno XVI, No. 1, January 1970, page 15. (Author's translation of Brzezinski statement. Since, however, it was presumably made in English and then translated into Italian, the new translation back into English may not be his exact words. Substantially, however, they are believed to be correct.)

Salisbury points out that

Many Americans view conflict between Russia and China or even all-out war between Russia and China as a boon to the United States, a clash between hostile Communist giants which could only weaken both contestants and strengthen the United States. Their attitude is similar to that expressed by President Truman (then still a senator) when the Nazis attacked Russia: "Let the two dictators, Stalin and Hitler, fight it out."

In his opinion such a view is shortsighted because the United States would eventually be drawn into a conflict of giants. In any event the prevailing winds from China, blowing eastward, make it fairly certain that the United States would suffer more than any other country, except Japan, from atomic fallout.

The reasons that have led to the present confrontation are many. Among them is the abiding mistrust of Asiatics engendered in the Russian by the terror of the Mongol invasion; although the Mongols were repulsed many centuries ago, the scars still remain. There is an equally fervent dislike of the Russians by the Chinese. The flame of that dislike or, better said, hatred, originates from overbearing Russian tactics and the extortion of territory and concessions from China when the latter was weak and politically ineffectual.³

There are, of course, many other differences including ideological splits and personal rivalries.

Salisbury paints a graphic picture of the Soviet military buildup in Siberia and the People's Republic of Mongolia. He also describes the Soviet successes in the pre-World War II border clash with the Japanese and in the operations against Japan at the end of the war which gives the Russian military a sense of confidence in their ability to carry out a lightning blow. He alludes to the argument advanced by some Russians: "Better hit them *now* while we have the edge. Better do it before they get the A-bomb" (this was the argument in the early 1960's; now it is, "better hit them before they get more A-bombs.").

3. The bitter feeling between Russia and China is, of course, treated at some length in the book under review. In addition, from the standpoint of Russian history, there is a good, short account of the Mongol invasion and its aftermath in Vernadsky's classic *History of Russia*, Chapter 3. (There are so many editions of Vernadsky that it is almost impossible to give a page reference. In the Bantam Matrix edition published in 1967 the Mongol invasion is dealt with on pp. 60 *et seq.*) There is also a good deal on the subject in Emil Lengyel's *Siberia*, 1943. The importance of hate in China is described by Lucian Pye in *The Spirit of Chinese Politics*, 1968, pp. 67 *et seq.*

Ordinarily a book of this type would not be considered appropriate for review in a law journal. In this case, however, the volume raises two highly interesting legal points. The first concerns the delimitation of frontiers and the light that boundary disputes shed on the intentions of contending parties. The second is whether title to territory wrested by force many years ago can be questioned in the present day.

To understand these two problems in the context of present Sino-Soviet relations one has to go back several centuries in history. More or less at the same time as the western European nations were conducting their ocean voyages of exploration and settling vast regions in the new world and in Asia, the Russians under Ivan The Terrible began the overland conquest of Siberia. It was a long and slow process fraught with difficulties. When the Russians finally met the Chinese their eastward march was halted and they had to agree in the Treaty of Nerchinsk of 1689 to stay out of the Amur region. Some two centuries later when the North Atlantic powers were vying with each other for colonial domination over Africa and dismembering China, Russia, in 1858, under the energetic administration of the Governor General of Siberia, Count Mouraviev Amoursky, brought heavy pressure on the Chinese to yield the Amur region. Two years later the Maritime Provinces, where Vladivostok is now situated, were also taken. The Chinese could do little to withstand that pressure for just about the same time the French and British armies were marching on Peking and, in any event, the Russians were stronger.⁴

On a Chinese map of 1954 used in Chinese secondary schools (reproduced by Salisbury on page 132) are shown nineteen areas designated as "Chinese territories taken by imperialism in the Old Democratic Revolutionary Era." Probably the two most important are the Amur regions and the Maritime Provinces.

The pertinent international law question is, of course, whether a nation acquires title to territory taken by force and, if not, does it acquire title as the result of long continued usage.

At the moment the most favored viewpoint seems to be expressed in the Stimson Doctrine which decried the Japanese conquest of Manchuria and refused to acknowledge its legality. Stimson said,

On January 7th last, upon the instruction of the President, this

4. See LENGYEL, *supra* at 108 *et seq.*

Government formally notified Japan and China that it would not recognize any situation, treaty, or agreement entered into by those Governments in violation of the covenants of these treaties, which affected the rights of our Government or its citizens in China. If a similar decision should be reached and a similar position taken by the other governments of the world, a caveat will be placed upon such action which, we believe, will effectively bar the legality hereafter of any title or right sought to be obtained by pressure or treaty violation, and which, as has been shown by history in the past, will eventually lead to the restoration to China of rights and titles of which she may have been deprived.⁵

The League of Nations endorsed the Stimson concept.⁶

Even if the Stimson Doctrine is considered to represent present international law, there is a question whether it applies to territory taken from an enemy adjudged to be an aggressor. The latter is important as at the end of the last war the Allied Powers did not hesitate to take Italian territory from Italy, an alleged initiator of hostilities, and to give it to Yugoslavia and France.⁷

Other treaties of peace followed the same pattern. Does this bring international law back full cycle to the early theories of a just and unjust war?⁸

Even if it is admitted, at least for purposes of argument, that a state cannot presently obtain title to territory through duress, can it be said that the same rule applies to areas that were taken long before nations renounced war as an instrument of national policy and duress was not considered to vitiate a treaty? Obviously, India took the stand that the acquisition of land, by force however remote in time, is illegal, when it incorporated Goa.⁹ It is also the essential basis of the Spanish position on Gibraltar despite the Treaty of Utrecht of 1713 and the long possession of The Rock by the British.¹⁰ Undoubtedly a thorough survey of territories that have changed hands in the last one hundred or two hundred

5. I HACKWORTH'S DIGEST OF INTERNATIONAL LAW, 334-335 (1940).

6. *Id.*

7. 61 STAT. part 2, 1371-1372.

8. A good short discussion of the early theory of what constitutes a just war may be found in Nussbaum's *History of the Law of Nations*, 1950, 58 *et seq.*

9. There is a discussion of the Goa situation in 56 AM. J. INT'L L. 617 *et seq.* (1962).

10. The treaty of Utrecht may be found in Toynbee, I *Major Peace Treaties of Modern History*, 217 *et seq.*

years will bring to light many instances when the transfer was made only as a result of duress exercised by a stronger power on a weaker one. In fact, if one pursues the theory to its logical extreme, the title of United States to the entire Southwest would be rather dubious.¹¹

Unquestionably the problem of the Amur region and the Maritime Provinces looms large in any Chinese thinking. At the present time, however, the focus of the dispute centers on the location of the boundary between Russia and China along the Ussuri River. In particular, there has been a serious clash arising from conflicting claims as to the ownership of Damansky Island, a rather desolate island on the Ussuri River with a few Chinese fishing shacks on its shores. The Russian theory seems to be predicated on the thesis that the border actually lies on the Chinese side of the river and that Damansky Island is therefore Russian. In support of that theory the Soviet Embassy, Information Department, in Washington has issued Statements of the Government of the USSR, one on March 30, 1969, and the other on June 20, 1969. In the statement of March 30, 1969, the USSR maintains,

[t]he Soviet-Chinese border in the Far East, as it exists today, shaped many generations ago and stretches along the natural frontiers separating the territories of the Soviet Union and China. This border received legal status by the Aigun (1858), the Tientsin (1858) and Peking (1860) treaties. In 1861 the sides put their signatures and affixed their state seals to a map on which the demarcation line in the Ussuri territory was made.

In the Damansky Island district this line passes directly along the Chinese bank of the Ussuri River. Both the Soviet and Chinese states have the originals of the above-mentioned documents.

From this statement it seems clear that the Soviets rely on three treaties and a map to establish their point that the boundary is on the Chinese side of the river. In the June 20, 1969, statement they elaborate on what they have said before in these words:

The state delimitation in the Primorye territory was carried out by tsarist Russia and the Manchu-Chinese Ch'ng Em-

11. The title of the United States is based upon the treaty of Guadalupe Hidalgo. That treaty may be found in 2 *Malloy Treaties, etc.* 1107 *et seq.* (1910). Mexico was given Fifteen Million Dollars, but it scarcely can be believed that Mexico would have voluntarily transferred that territory to the United States for that sum.

pire in the second half of the 19th century. The Peking treaty of 1860 named the river Ussuri as the border between Russia and China. Besides, according to protocols supplemented to the treaty in 1861, the "border line" along river sectors was shown on the map by a red line. In the area of Damansky Island it was drawn directly along the Chinese bank of the river, so this island, being on the Soviet side of the "border line," belongs, therefore, to the Soviet Union and not to China.

It is generally known that in international law there does not exist a norm that would automatically establish the border on border rivers as passing through the middle of the river's main stream. When concluding appropriate treaties the states delineate the border as they see most suitable in accordance with circumstances. There are examples in interstate relations when the border was established along the bank of the river, but not along the main stream.

The allegation that the border is not normally considered to follow the middle line of the river's main stream—the *thalweg*—is a curious one since the Soviets have consistently adhered to the rule of international law that the actual frontier line follows the main channel in a navigable stream.¹² It is hardly likely that the writers of the statements just quoted were not familiar with the customary doctrine.

It is, of course, possible for two nations to decide that the boundary runs on one or the other side of the river. It does not seem, however, that the Soviet reference to the map supposedly establishing the river boundary is very conclusive since the map was apparently a small scale one on which the exact location of the boundary in relation to the stream would have been difficult to show. The Chinese Foreign Office in its reply to the Soviet allegation makes precisely this point saying,

[t]he map attached to the "Sino-Russian Treaty of Peking" and the red line on the attached map was drawn unilaterally

12. The Soviet position with regard to the "*thalweg*" is stated in *International Law* edited by the Academy of Sciences of the U.S.S.R. Institute of State and Law, on page 196 in these terms:

When boundaries change as a result of natural phenomena (usually as a result of changes in the course of boundary rivers or streams) the new line is determined by the neighbour States. Customarily in the case of navigable rivers where the boundary line runs through the middle of the mid-channel (*thalweg*) it is shifted in accordance with natural changes in the whereabouts of the mid-channel. (Emphasis added).

one year before the signing of the treaty and imposed on China by tsarist Russia. The attached map is on a scale smaller than 1:1,000,000. The red line on it only indicates that the rivers form the boundary. It does not, and cannot possibly, show the precise location of the boundary line in the rivers.¹³

The author has gone through the letters, official documents and other material written by or concerning Mouraviev Amoursky in a two volume work edited by Ivan Barsukov to see whether any of the contemporaneous material would shed any light on the present frontier problem.¹⁴ Unfortunately, the two volumes do not have any index so that one is never absolutely sure that one has caught everything that is pertinent. Subject to this caveat there does not seem to be anything in the material which would indicate that the Russians considered that the border ran on the Chinese side of the river. On the other hand, on page 510 of Volume 1 reference is made to a project of Count Mouraviev which, in translation reads as follows:

- (1) The boundaries between the two states will be on the River Amur so that the left bank to the mouth will belong to the Russian state, and the right to the Ussuri River to the Chinese state, from there by the Ussuri River to its sources and from them to the Peninsula of Korea.
- (2) Navigation on the rivers constituting the boundary will be permitted solely to the vessels of the two states.
- (3) On those rivers free trade is permitted.
- (4) Chinese subjects found on the left bank will be re-settled on the right bank within a period of three years.
- (5) A study to be made (through persons especially appointed for the purpose by both parties) of all former treaties for establishment of new regulations on all subjects to the benefit and glory of both states.
- (6) The present agreement will be considered as supplemental to the former treaty.

It would seem that if there had been any intention to make the boundary on the Chinese side of the river, that intention would have been spelled out.

Later on, on page 552 of the same volume, it is stated that

13. From a text kindly supplied by Mr. Salisbury.

14. GRAF NICOLAI NIKOLAEVICH MOURAVIEV AMOURSKI MATERIALI DLIA BIOGRAFIJ edited by Ivan Barsukov, volumes 1 and 2, Moscow 1891.

Count Mouraviev Amoursky came to his former opinion that the confirmation of a new frontier on the Amur and Ussuri Rivers must take place in Peking by the approval of those maps which will be furnished to our plenipotentiary in Peking.

The fact that the approval of the maps was purely routine is attested to by the statement on page 559 that Count Mouraviev, foreseeing that there would not be any obstacles to the confirmation of the boundary map in Peking requiring his personal participation and presence, decided to go to the Southern parts of Manchuria. Since none of the three treaties specifically mention the boundary as being on the Chinese side of the river, it would seem that the maps should have loomed large in importance if, through the maps, the Russian right to control the entire river was to be established. In such a case would Count Mouraviev blithely have gone to Southern Manchuria? Moreover, such control seems inconsistent with the mutual privilege of free navigation, apparently on the basis of equality, suggested by Mouraviev Amoursky himself.

The only conclusion that can be reached is that the Soviets have an extremely weak case both in international law and on the basis of the treaties and the map combined. The question then arises as to why the Soviets are pressing such a poor argument, particularly since the records are there for anyone who wishes to investigate the facts. One possibility is that the Russians simply do not want to give up islands that would belong to China if the *thalweg*¹⁵ principle were followed. On the other hand, it is possible, even though it may seem far fetched, that the Soviets are deliberately maintaining an untenable position in order to goad the Chinese. They know full well that the Chinese are extremely sensitive on border issues as was demonstrated by the clash several years ago between China and India.¹⁶ If the Chinese so goaded, could be persuaded to attack, would that give the Soviets the

15. See note 12 for "thalweg" definition.

16. The extreme sensitiveness of the Chinese on border issues is hinted at by a recent British writer on China. In his *Anatomy of China*, 1969, page 205, Wilson says,

India must be blamed for under-estimating Chinese sensitivity over the British origin of the border, over the Indian interest in Tibet and over the asylum given to the Dalai Lama. Nehru was quick to remind the Western powers of the need to make allowances, in dealing with an apparently mistrustful and suspicious Chinese Government, for recent Chinese history and national pride, but he was strangely blind to these factors when it came to his own conflicts of interest with the new China. . . .

excuse that they want to launch a preventive action against the Chinese? If the Chinese can be shown to be aggressors, Soviet military action might have the support of their own people, the satellites, and the western world it would not otherwise have.

In the meantime, they bolster their alleged right to the Ussuri River and the Damansky Island by a flow of inaccurate quotations from international law and the glossing over of contemporary references, presumably expecting that many would accept their version at its face value.

Admittedly there are two flaws to this theory. The first is that the Soviet bureaucracy at the present time is not endowed with an over-abundance of imagination. In fact, as pointed out in a series of brilliant essays edited by Brzezinski, the Soviet government is a government of clerks.¹⁷ Would they be capable of Machiavellian reasoning—not from the standpoint of morality but from the standpoint of intelligence? On the other hand, the ineptitude of their presentation might be typical of essentially bureaucratic minds.

The second is that the Soviets were apparently the ones who took the initiative to begin the current border talks with the Chinese. This could be done for the genuine purpose of allaying a dangerous dispute. On the other hand, it could be a facade to demonstrate the reasonableness of the Soviet position and provide additional justification if the Chinese still attacked Damansky Island.

No one, of course, really knows, but the situation lends itself to fascinating speculation. It appears an excellent case history of the use of misuse of international law to promote a political objective. In any event, whatever one's views, *War between Russia*

17. DILEMMAS OF CHANGE IN SOVIET POLITICS, ed. Brzezinski, 1969. In particular see his introductory essay on page 10. Somewhat the same concept is voiced by two well known commentators, Roscoe and Geoffrey Drummond in a column which appeared February 24, 1970, in the Miami Herald. They say, [t]he leadership of the Soviet government—in the view of British Western world's most informed Kremlinologists—is manned by relatively incompetent, third-rate men with nothing better coming from below. See also Robert Conquest, *Stalin's Successors*, 48 FOREIGN AFFAIRS 509 (April 1970) quoting numerous authorities very critical of the ability of the present Soviet leadership. Conquest referring to the death of Stalin and current Soviet leadership says (p. 522) "It is as though the death of a Sultan were to be followed by the rule of a committee of his eunuchs."

and China should be read, if only for its knowledgeable account of a situation of great interest to the international legal observer.¹⁸

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18. The foregoing book review was written last spring. In the intervening period there have been a series of border talks between the Russians and the Chinese which have not been particularly successful.

In an article in the *New York Times* of August 30, 1970, Harrison Salisbury saw little progress towards definitive settlement. He said,

While Moscow and Peking have obviously drawn back from the ragged edge of military conflict, diplomatic observers are not quite certain how far the pull-back has gone nor when a new act in the complex international drama may begin. Only one thing seemed certain on the first anniversary of the 1969 outbreak of sharp Russian-Chinese conflict on the Sinkiang frontier and the accompanying nuclear brinkmanship, that is that the Russo-Sino quarrel goes on and on.

The very fact that the Russians sought such talks is a little puzzling in view of their previous uncompromising position. Moreover, it is hard to reconcile a desire for such talks with a plan to force the issue and make it appear that the Chinese were the aggressors. No one outside of the Kremlin can really explain what lies behind the most recent Soviet moves. Several explanations are possible. One is that Soviet policy is uncertain and vacillates between hawk and dove with the doves in the ascendency favoring the talks. Another is that the Soviets knew in advance the talks would fail. Having participated in them, however, would give an extra fillip to Soviet claims to reasonableness and highlight further the alleged provocativeness of the Chinese.

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FOR FREE MEN IN A FREE WORLD. By The President's Commission for the Observance of Human Rights Year 1968. Department of State Publication 8434. Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. Pp. 250.

This survey of human rights in the United States, released in July 1969, was written to commemorate the adoption of the Universal Declaration of Human Rights by the United Nations General Assembly on December 10, 1948. Matthew's advice to consider the beam that is in thine own eye seems to be overworked in this case, and while most will find the general tone of the work entirely too apologetic regarding the status of human rights in the United States, it does represent an important contribution to the literature in this field.

The foreword by W. Averell Harriman, Chairman of The President's Commission, outlines the history of the adoption of the Declaration and points out that it is not a treaty which imposes legal obligations. The foreword fails to give any of the history of the debate on the Declaration which would have served to present a more balanced picture of our position, as contrasted with that of the Communist countries. One of the book's announced purposes was to "enlarge our people's understanding of the principles of human rights" and to contribute to our pride in the past. In my opinion it succeeds fairly well in its first objective.

The book discusses the Preamble of the Charter and its thirty articles in separate chapters by various authors and contains a short Epilogue entitled "Unfinished Business" which deals principally with the disaffection of today's youth and its concern for the future. I must disagree with the conclusion that people in positions of responsibility are responding with Marie Antoinette's misquoted advice to "let them eat cake." Statements suggesting that such people are not as concerned as young people do much to polarize our nation.

The statement on the Preamble points out that the Charter is consistent with the basic principles of our own Declaration of Independence and Constitution. It emphasizes that the only alternative to rebellion is protection of human rights by the rule of law and that this has a direct bearing on current events in the United States.

The discussion of our progress toward the attainment of the

ideals in Article 1 of the Charter is by Professor Oscar Handlin, of Harvard. It seems to set the confessional tone for much of the volume in calling attention to many disgraceful situations which have existed in the United States with respect to treatment of our native Indians and Negroes (certainly a legitimate exercise) but failing to point out that on balance the protection of dignity in man has received more recognition in the United States than anywhere else in the world at any time in history.

The discussion of Article 2 by various government agencies is a good review of the status of the various dependencies of the United States. The review of Article 3 was prepared by the Department of Justice and discusses due process, the death penalty, and the right of the individual as contrasted with the right of society. It concludes by stating that "security of person" is closely related to a wide range of measures needed to restore law and order in the cities and respect for the rights of others.

The Executive Director of the Commission, James Frederick Green, wrote the comment dealing with Article 4 which contains an excellent review of the history of the abolition of slavery in our country but strangely concludes that many of the "badges of servitude" still remain.

Professor Arthur Sutherland of Harvard examines our situation under Article 5 and seems to adopt the theme of "police brutality." No doubt it occurs but his treatment makes it appear that it is prevalent and usual in the United States. The discussion of Article 6 is by the Secretariat of the President's Commission and concedes that in the United States our citizens have been recognized as persons before the law. At this point in the book the reader feels it's high time someone "accentuated the positive" about something in the United States.

The Commission on Civil Rights prepared an excellent review of our progress under the Fourteenth Amendment in studying our compliance with Article 7. Article 8 is reviewed by Professor Ferguson, Dean of the Howard University School of Law. It deals largely with the right to effective remedies by competent national tribunals and discusses voting rights as well as racial segregation in public schools. Article 9 which deals with arbitrary arrest, detention and exile is discussed by Attorney Richard J. Medalie, of Washington, D.C. The principal discussion revolves around the *Miranda* case and the importance of protecting the individual who is charged with a crime. One wonders if the human

rights of society to be protected against the criminal should not receive some attention.

The statement by the Civil Rights Commission on Article 10 is a fairly balanced presentation of the situation which prevails in our courts. The same can be said for the discussions of Articles 11 and 12 which were prepared by Professor Samuel Dash, of Georgetown University Law Center, and Professor Westin, of Columbia University.

Bruce V. Bitker, of Milwaukee, and the Bureau of Security and Consular Affairs are concise and to the point in dealing with the right of freedom of movement and the right to leave and return to one's country, which are the subjects of Article 13.

Article 14, which speaks of the right to political asylum, is reviewed by the Bureau of Immigration and Naturalization in a factual manner. The careful and exact analysis of our compliance with Article 15 was prepared by P. J. Fenter, a Summer Intern in the office of The Legal Adviser, Department of State. The comprehensive statement by the Women's Bureau of the Department of Labor concludes that developments in protecting marriage, the participants therein, and the family are completely in line with Article 16 of the Declaration.

Article 17 states that everyone has the right to own property and that no one shall be arbitrarily deprived of it. The discussion of the Article by David M. Osnos, of Washington, D. C., is limited to the restrictions on property rights which have developed in the United States and even treats antitrust laws as a limitation on property rights instead of a regulation of business practices. The right to own property and not to have it taken without due process is one of the most basic human rights. It is at the core of the differences between the free world and the Communist world, but one finds little open discussion and writing about the subject. The constant repetition of the Communist line that property rights are opposed to human rights seems to have had substantial impact. It would be well for someone to make a comprehensive study of the depreciation of this article of the Declaration in the debates on private property rights which have occurred in the United Nations during the last twenty years. The right to own property has not been the subject of any Human Rights Convention and is not likely to be as long as the Communist nations exercise the influence they do in the organization. These nations have opposed any

resolution which sought to recognize the right of anyone to own property other than the state.

Professor Patricia Roberts Harris, of Howard University School of Law, has written a thoughtful and balanced statement regarding the right of freedom of thought, conscience and religion provided for in Article 18. The discussion of freedom of opinion and expression under Article 19 prepared by Stephen C. Schott, Deputy Executive Director of the Commission, is also a comprehensive and lucid one.

The comment on the right of peaceful assembly and association under Article 20 was prepared by John Carey, of New York. He briefly discusses the history of this right in our courts and points out the obvious need for further improvement in our political, economic and social attitudes, as distinguished from the enactment of additional laws on the subject.

The survey of political rights specified in Article 21 are competently discussed by James Frederick Green, of the Commission. The Social Security Administration prepared a succinct review of Social Security in the United States, from which one must conclude that our country is complying with the requirements of Article 22. The Office of the Solicitor of the Department of Labor prepared the discussion on the right to work under Article 23 and concludes that we need to do more to make nondiscriminatory provisions in our laws effective. The discussion of Article 24 on the right to rest and leisure is brief and to the point. One might quarrel with the conclusion that television has so far lived up to its potential as an educational device.

The survey of our progress under Articles 25, 26 and 27, prepared by various agencies of the United States Government, involving economic, social and cultural rights are comprehensive and do not seem to contain as much self-recrimination as many of the statements regarding the articles which set forth civil and political rights.

The discussion of Article 28, prepared by the Executive Director of the Commission is a sound and straightforward analysis of the right of human beings to a social and international order in which the rights and freedoms set forth in the Declaration can be fully realized. It points out that to define the kind of social and international order meant by the Article requires a subjective judgment on which the nations of the free world and the Com-

munist world differ. Mr. Green believes the free world stands for constitutional government, democratic institutions, an economy of expanding opportunities, an atmosphere of tolerance and social justice, respect for international law, and the maintenance of peace. It is conceded that we Americans have not yet achieved a perfect social order but it is emphasized that we are doing more to attain it today than at any time in our previous history. Mr. Green points out that the United States is investing a high percentage of its human and material resources to deter aggression and to maintain peace and thus establish international order. He concludes that our record is not bad in the human rights field, notwithstanding our failure to adhere to many of the Conventions. With respect to the Genocide Convention, the statement is made that genocide has never taken place in the United States, a conclusion which might be challenged by my blood brothers who disagreed with the theory that "the only good Indian is a dead Indian." The Connally reservation to our adherence to the jurisdiction of the International Court of Justice is commented upon. We would all agree with the conclusion that there is yet much to be done throughout the world to secure a proper social and international order.

The comments on Articles 29 and 30 were prepared by Mr. Green, the Executive Director of the Commission. They were made a part of the Declaration in an attempt to stress that with rights one always has responsibilities, a fact which is currently not accepted by a segment of our society. Freedom of opinion and expression is limited in our country by laws against incitement to violence, but unfortunately there are those who arrogantly assign to themselves the right to choose which laws they will obey.

As indicated above, the Epilogue deals largely with the youth movement in our country and does cite some of the more commendable efforts of our young people.

This reviewer hopes that there is sufficient provocative material contained herein to cause you to go out and get a copy of *For Free Men in a Free World* and read it. We need more careful study of the true meaning of human rights and responsibilities and less raucous shouting about the subject.

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