In the context of recent U.S. Navy freedom of navigation operations near the Spratly Islands,[20] China's rhetoric over protecting its territorial sea—including rejecting innocent passage rights reflected in UNCLOS—is undercut by its failure to give a geographic definition to its claim.

Second is China's controversial nine-dash-line claim. Of all claims in the South China Sea, this one is surely the most vexing and anomalous. With one country appearing to claim "everything," the nine-dash-line claim adversely affects other, legitimate disputes that might otherwise be manageable. As noted above, China has failed to communicate the nature and legal basis of its claim. Accordingly, any assessment of the legality of the nine-dash line requires an assumption as to its meaning. Assuming for the sake of argument that the nine-dash line reflects a historic claim (as suggested by Jia and Gao in this *Journal*[21]) and that the modern international law of the sea permits such claims over waters far from a state's shores, the problem for China is that it would still need to prove such a claim under international law. In this regard, McDorman (chapter 5) provides a concise view of what can be said about the thin and uncodified law pertaining to historic claims. McDorman stops short of opining on the legality of the nine-dash line (or any historic rights within it), either because of its unclear meaning or because of the need to steer clear of the merits of the Philippines-China arbitration. But the reader can connect the dots. It is apparent from McDorman's discussion that China would not meet the required elements for demonstrating valid historic waters or historic rights. For instance, among the "basic requirements" to be met is an "attitude of general toleration" of foreign states (p. 153). It is hard to see how China could ever satisfy this requirement considering the international opprobrium that has been heaped upon this claim.

Interested observers await the forthcoming award of the Philippines-China arbitral tribunal, which, in the coming months, could render a decision that bears on the legality of China's nine-dash line and other claims in the South China Sea. While the award will be binding only on China and the Philippines, the broader implications for the rule of law in the oceans may be considerable. UNCLOS's preamble states that it is intended to "settle, in a spirit of mutual understanding and cooperation, all issues relating to the law of the sea" and establish "a legal order for the seas and oceans which will facilitate international communication, and will promote the peaceful uses of the seas and oceans."[22] A major accomplishment of UNCLOS has been to bring clarity and uniformity to the maritime zones to which coastal states are entitled, whether as a matter of treaty law or customary law. Permitting a state to derogate from UNCLOS's provisions because its claims predate the treaty is contrary to and would seemingly undermine this object and purpose.

Today, mere reference to the South China Sea connotes tension and conflict. But unlike many other international hot spots, understanding the disputes in the South China Sea requires familiarity with international law. In this regard, *The South China Sea Disputes and Law of the Sea* is a valuable resource for students, scholars, and practitioners as it brings together leading experts on the subject to provide the legal background needed to understand and evaluate the maritime disputes of the region.

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The Principles and Practice of International Aviation Law. By Brian F. Havel and Gabriel S. Sanchez. Cambridge, New York: Cambridge University Press, 2014. Pp. xvii, 444. Index. $125, cloth; $49.99, paper.

Is aviation law a discipline sufficiently different from other areas of the law to warrant separate treatment?[1] Legal historian Stuart Banner has

[20] Helene Cooper & Jane Perlez, *White House Moves to Reassure Allies with South China Sea Patrol, but Quietly*, N.Y. TIMES, Oct. 28, 2015, at A7.

[21] Gao & Jia, *supra* note 12 and accompanying text.

[22] UNCLOS, *supra* note 2, pmbl.

[23] The views expressed herein are those of the reviewer and do not necessarily reflect the views of the U.S. government.

[1] Is air law (or aviation law) a sufficiently different subject from other areas of the law to warrant categorization as a separate discipline? True, much of air law is

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declared air law dead, observing the declining number of U.S. programs in aviation law, or law professors teaching it. As he explains, "Air law ceased to be a useful category when the airplane was no longer a novelty."[2] Nonetheless, there are volumes of multilateral conventions, bilateral treaties, statutes, regulations, and jurisprudence that are unique to aviation in all its forms. On this issue, this reviewer sides with Brian Havel, associate dean of international affairs at DePaul University College of Law, and Gabriel Sanchez, an attorney and independent researcher, in whose comprehensive treatise, *The Principles and Practice of International Aviation Law*, we find aviation law[3] very much alive:

> [T]o legal conservatives who may be suspicious of *sui generis* bodies of law that depart from the ideal of a set of foundational principles covering all of life's events, *international* commercial aviation offers a compelling response as to why it can and should support a separate body of law: it is a massive industry, heavily regulated, structurally borderless, and treated by governments (e.g., through creation of a separate United Nations (U.N.) organ to frame common global aviation rules) not as an ordinary part of international trade but as singular and exceptional. (Pp. 4–5)[4]

Robert Jarvis concurs: "Aviation law, after years of languishing on the sidelines, currently is enjoying unprecedented popularity in American law schools. . . . [S]ome of the attention is due to the fact that, for the first time in history, instructors can choose from three competing aviation law casebooks."[5] Though not a casebook, Havel and Sanchez's new treatise is a valuable reference to be used by students, researchers, practicing lawyers, law professors, industry executives, and policy makers.

Unlike maritime law, which had a long evolutionary history of customary international law dating from the Phoenicians, the Greeks, and the Romans, and subsequently codified into conventional international law, air law was formulated into conventional international law at its infancy, without the gradual step-by-step evolutionary growth of customary international law. Isabella Henrietta Philepina Diederiks-Verschoor observed: "Due to the rapid developments in aviation and with the law-makers attempting to keep pace, custom has largely been bypassed as a source of law, the result being that air law today consists mainly of written [conventional international] law."[6]

Yet Havel and Sanchez have pointed to areas where customary international law appears present in full glory in aviation. They argue that airspace sovereignty is such a principle, with general sovereignty as a dominant principle among states dating back at least as far as the Treaty of Westphalia (1648). Further, they point to the nationality

a part of other areas of law and exists in a broader legal normative framework. Air law can be found in various areas of public law (e.g., constitutional law, administrative law, criminal law, antitrust, and labor law) and private law (e.g., torts, contracts, and property). To be an aviation (or air) lawyer, one needs to have a command of many of the established disciplines of law.

[2] STUART BANNER, WHO OWNS THE SKY?: THE STRUGGLE TO CONTROL AIRSPACE FROM THE WRIGHT BROTHERS ON 224 (2008).

[3] Some dispute exists in the academic literature as to whether the proper term is "air law," or "aviation law," "aerospace law," or even "aeronautical law." This reviewer has used the terms *air law* and *aviation law* interchangeably. The term *air law* apparently was coined in 1902 by Ernest Nys of the University of Brussels a year before the Wright Brothers flew at Kitty Hawk, North Carolina. MICHAEL MILDE, INTERNATIONAL AIR LAW AND ICAO 1 (2008).

[4] *See also* RONALD I. C. BARTSCH, AVIATION LAW IN AUSTRALIA 22–25 (4th ed. 2012). In one of the earliest casebooks addressing aviation law, the authors state:

> In some instances, the business law of aviation does not differ from the legal principles encountered in the conduct of any other business. To that extent, then, any application of legal principles is simply "new wine in old bottles." In other instances, a person in contact with aviation meets new legal problems not encountered in other types of business or covered in other texts or courses in law. Not only are there new and different problems, but the principles of law are also new. In such instances, we have "new wine in new bottles."

GERALD O. DYKSTRA & LILLIAN G. DYKSTRA, THE BUSINESS LAW OF AVIATION v (1946).

[5] Robert M. Jarvis, *Carl Zollman: Aviation Law Casebook Pioneer*, 73 J. AIR L. & COM. 319, 320 (2008) (footnotes omitted).

[6] I. H. PH. DIEDERIKS-VERSCHOOR, AN INTRODUCTION TO AIR LAW 9–10 (6th rev. ed. 1997).

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rule, whereby airlines are expected to be "owned and controlled by citizens of their home States," as yet another such customary principle (p. 18).[7]

Though the authors describe the Chicago Convention[8] as a success—particularly in the establishment of universal safety standards by the International Civil Aviation Organization (ICAO) (pp. 34–35)—they express repeated discomfort with the nationality rules of international aviation, whereby bilateral air transport agreements permit a state, if it so chooses, to suspend the services of a foreign airline not "substantially owned (and often also effectively controlled)" by the other state's nationals (p. 69), and the provisions in domestic legislation restricting domestic air transport (i.e., cabotage)[9] to airlines owned by its own nationals.[10] They contend that the nationality rule has been part of international aviation law "since the signing in 1944 of the [Chicago Convention] and its subsidiary accords, the Two Freedoms and Five Freedoms agreements" (p. 125).[11] Actually, nationality restrictions have their origin in the predecessor to the Chicago Convention, the Paris Convention of 1919.[12] Moreover *airline* nationality is nowhere addressed in the Chicago Convention.[13]

Havel and Sanchez argue that, although the modern "open skies" bilateral air transport agreements open entry and pricing (p. 123), they do not go far enough,[14] for they restrict the creation of global megacarriers by effectively prohibiting cross-border mergers, acquisitions, and consolidations (p. 89). Elsewhere in the book, however, they concede that three virtual megacarriers exist: the oneworld, Skyteam, and Star alliances (p. 105). In negotiating the multilateral "Open Skies Plus" agreement in 2007, the European Union had urged the United States to liberalize its foreign ownership restrictions to allow up to 49 percent foreign ownership, which is the rule on the European side of the Atlantic. Though the U.S. Department of Transportation (USDOT) was willing to

[7] The unlawfulness of piracy is also a customary international law rule, though in aviation an elaborate conventional regime has been developed, beginning with the Tokyo Convention of 1963. *See* Convention on Offenses and Certain Other Acts Committed on Board Aircraft (Tokyo Convention), Sept. 14, 1963, 20 UST 2941, 704 UNTS 219.

[8] Convention on International Civil Aviation, Dec. 7, 1944, 61 Stat. 1180, 15 UNTS 295 [hereinafter Chicago Convention].

[9] Havel and Sanchez lament the "near-universal prohibition on States granting foreign airlines 'cabotage rights,' that is, the privilege to move passengers or cargo between two points within a single domestic territory" (p. 6). But, in fact, the entire European Union granted its carriers reciprocal air traffic rights, including cabotage, in 1992. Other states have granted cabotage rights to foreign airlines as well.

[10] The "substantial ownership and control" requirements are found even in modern "open skies" bilateral air transport agreements. Typically, they give states the discretion to "withhold or revoke a certificate or permit to an air transport enterprise of another State in any case where it is not satisfied that substantial ownership and effective control are vested in nationals of a contracting State." Chicago Convention, *supra* note 8, Art. I(5).

[11] Later, the authors allege that airline nationality was a "post-Convention development" (p. 341). Not so. The transit and transport agreements, both of which included the "substantial ownership and effective control" clause, were negotiated at the same diplomatic conference that produced the Chicago Convention in 1944.

[12] Article 7 of the Paris Convention of 1919 required that aircraft registered in a state must belong "wholly to nationals of such State." It further provided: "No incorporated company can be registered as the owner of an aircraft unless it possesses the nationality of the State in which the aircraft is registered, unless the president or chairman of the company and at least two-thirds of the directors possess such nationality . . . ." Convention on International Civil Aviation, Art. 7, Oct. 13, 1919, 11 LNTS 174, *reprinted in* 17 AJIL SUPP. 195 (1923) (no longer in force) [hereinafter Paris Convention]. In 1919, most airlines owned the aircraft that they flew; leasing did not become widespread until well after World War II. Hence, the Paris Convention effectively required airlines to be owned and controlled by the states that issued the operating licenses.

[13] Paul Stephen Dempsey, *Nationality Requirements and Cabotage Restrictions in International Aviation: Sovereignty Won and Sovereignty Lost, in* 'PROJECT 2001 PLUS'—GLOBAL AND EUROPEAN CHALLENGES FOR AIR AND SPACE LAW AT THE EDGE OF THE 21ST CENTURY 129 (Stephan Hobe, Bernhard Schmidt-Tedd & Kai-Uwe Schrogl eds., 2006). Havel and Sanchez concede the point late in the book (p. 329).

[14] Havel, for example, calls for elimination of what he describes as "the central legal pillars of the prevailing Chicago system of protective bilaterals—the principle of cabotage . . . and the nationality principle . . . . Until these pillars crumble, in the US *and* among its aviation trading partners, no authentic globalization of the international aviation system will be possible." BRIAN HAVEL, IN SEARCH OF OPEN SKIES: LAW AND POLICY FOR A NEW ERA IN INTERNATIONAL AVIATION 5–6 (1997).

proceed with a rulemaking to give the statute an elastic interpretation, the U.S. Congress passed a funding bill for the USDOT that explicitly prohibited such administrative activism. U.S. regulators instead insisted on the creation of "metal neutral joint ventures"[15] as the quid pro quo for antitrust immunity of airline alliances (pp. 159–61 & n.142), which is the most anticompetitive alternative this side of an outright merger. USDOT and alliance members allege that, although antitrust immunity allows competitors to fix prices and ration capacity, consumers benefit from such joint ventures in the form of lower prices (pp. 151, 160–61), a questionable claim that, unfortunately, Havel and Sanchez never challenge. Meanwhile, major cross-border European airline mergers (e.g., Air France/KLM, British Airways/Iberia, Lufthansa/Austrian) have taken place (pp. 139–40). Middle Eastern air carriers are purchasing significant minority stakes in a number of European carriers (e.g., Etihad Airways purchased significant equity in Air Berlin and Alitalia). Some Southeast Asian airlines (e.g., Tiger Airways and Air Asia) also are setting up branded affiliates in nearby countries. Thus, ownership and nationality are becoming increasingly blurred, despite the ownership and nationality rules, which Havel and Sanchez describe as a "double-bolted lock" (p. 91). One bolt, we are told, could be opened were the "right of establishment" (i.e., the opportunity for foreign citizens to establish a domestic airline in a country other than their own) ubiquitously embraced (p. 172), as it has been in Australia, a policy suggestion worthy of consideration. Hence, a foreign-owned airline could engage in domestic cabotage flights.

Releasing the other bolt (i.e., the requirement that a foreign airline be substantially owned and effectively controlled by citizens of the country of the bilateral air transport agreement conferring traffic rights) requires a different approach. The existence of the "substantial ownership and effective control" requirements has effectively precluded adoption of the maritime law notion of "flags of convenience"—and the myriad of safety problems that it has produced in the maritime trade[16]—into international aviation. But importantly, although having the right to exercise this prohibition, each state may also waive the right to exercise it. The United States has often used the discretionary application of the rule as leverage to gain concessions on commercial issues in international aviation;[17] but, increasingly, the requirement is waived.

Though nationality requirements give Havel and Sanchez enormous heartburn (as they rail

[15] A "metal-neutral joint venture" is an intercarrier relationship for pooling costs and revenue in which neither airline cares which one actually transports the passenger to his or her destination.

[16] Flags of convenience have created enormous problems in the maritime trade. *See, e.g.*, Paul Stephen Dempsey, *Compliance and Enforcement in International Law—Oil Pollution of the Marine Environment by Ocean Vessels*, 6 N.W. J. INT'L L. & BUS. 459 (1984); Paul Stephen Dempsey & Lisa L. Helling, *Oil Pollution by Ocean Vessels—An Environmental Tragedy: The Legal Regime of Flags of Convenience, Multilateral Conventions, and Coastal States*, 10 DENV. J. INT'L L. & POL'Y 37 (1980).

[17] The United States routinely waives the foreign ownership requirement if a liberal bilateral agreement is in place between all parties. For example, the United States looked the other way when Iberia obtained control of Aerolinas Argentinas in 1990, after Argentina signed an open skies bilateral agreement with the United States. The United States did not look the other way in 2005 when Richard Branson's Virgin Nigeria sought to serve the United States, as, at the time, access to London Heathrow Airport was still limited to two U.S.-flag airlines. Similarly, the 1992 proposal of British Airways to gain effective control of USAir hit a shallow reef as bilateral negotiations between the United States and the United Kingdom stalled over opening Heathrow to more than the two U.S.-flag carriers authorized under the Agreement Concerning Air Services (Bermuda II), July 23, 1977, U.S.-UK, 28 UST 5367, *as amended* Apr. 25, 1978, 29 UST 2680, Dec. 27, 1979, 32 UST 524, Dec. 4, 1980, 33 UST 655, Feb. 20, 1985, May 25, 1989, and Mar. 11, 1994. The United States has waived the nationality requirements for airlines licensed in states that meet FAA Category I safety and security requirements and that conclude an "open skies" bilateral agreement with the United States. Hence, the presence of an ownership and control restriction can be an effective lever to pry loose concessions that would be unattainable absent formal renunciation of the bilateral agreement. Pablo Mendes de Leon, *A New Phase in Alliance Building; The Air France/KLM Venture as a Case Study*, 53 ZEITSCHRIFT FÜR LUFT— UND WELTRAUMRECHT 359 (2004); Allan I. Mendelsohn, *Myths of International Aviation*, 68 J. AIR L. & COM. 519, 524–26 (2003); ISABELLE LELIEUR, LAW AND POLICY OF SUBSTANTIAL OWNERSHIP AND EFFECTIVE CONTROL OF AIRLINES 38 (2003).

against them repeatedly in the book, and heavily in two of its eight chapters), several policies have been advanced by others that favor such requirements:

- protection of national security (pp. 88, 140);
- assurance that the exchange of traffic and other rights go to airlines only of the state with which they were negotiated (a requirement often seen in trade agreements);[18]
- protection of national airlines from market dilution and destructive competition;[19]
- protection of labor wages and working conditions; and
- avoidance of the problems that exist in the maritime trade of "flag of convenience" vessels with lax safety, labor, and environmental restrictions (pp. 125–30).[20]

Though Havel and Sanchez dismiss these policy arguments in passing, the book would have benefited from an explanation as to why they are so casually rejected. The reader is left to wonder why the authors perceive that these policy motivations are irrelevant. Presumably, these motivations are antithetical to the authors' preference for laissez-faire. Yet these motivations are precisely the reasons that many states have been historically reluctant to embrace the policies that Havel and Sanchez so vigorously advocate.

Some states also recognize the "public utility" attributes of commercial aviation: that frequent and economical air service creates wealth in many sectors of the overall economy beyond air transport—far beyond the wealth that it creates for its investors—and that its preservation is essential to regional and national economic growth. To gain the benefits that ubiquitous transportation networks provide to other industries, some states regulate airlines under a regime of managed competition, while others infuse it with capital.[21] Thus, many states have historically perceived that the economic wellbeing of their airline(s) requires protection from the ravages of destructive competition. Though Havel and Sanchez deal with many issues thoroughly, they skirt around the enormous financial distress and massive bankruptcies that network carriers have suffered since deregulation and liberalization began; all federally certificated U.S. airlines in existence at the time of domestic deregulation in 1978 have made a trip to bankruptcy court, some several times; as liberalization in international markets has flourished, major U.S. international airlines like Pan Am, TWA, Braniff, and Eastern have disappeared.[22] More recently, as established airlines have lost significant

[18] "Coupled with defense and security considerations was a strategic trade component to the nationality rule: its applicability ensures that the concessions exchanged between two States cannot be captured by a third State not a party to the deal. This intended result is not dissimilar to the 'rule of origin' requirements in free trade agreements . . . " (p. 89).

[19] Deregulation guru Alfred Kahn described destructive competition as one of the unpleasant surprises of deregulation: "'I talked about the possibility that there might be really destructive competition, but I tended to dismiss it and that certainly has been one of the unpleasant surprises of deregulation.'" ELDAD BEN-YOSEF, THE EVOLUTION OF THE US AIRLINE INDUSTRY: THEORY, STRATEGY AND POLICY 103 (2006) (quoting Alfred Kahn); *see also* Alfred E. Kahn, *Airline Deregulation—A Mixed Bag, but a Clear Success Nevertheless*, 16 TRANSP. L.J. 229, 248 (1988) (noting that "deregulation bears substantial responsibility" for the "dismal" financial performance of the airline industry post-deregulation); Paul Stephen Dempsey, *The Financial Performance of the Airline Industry Post-Deregulation*, 45 HOUS. L. REV. 421 (2008).

[20] *See* Stephen D. Rynerson, *Everybody Wants to Go to Heaven, but Nobody Wants to Die: The Story of the Transatlantic Common Aviation Area*, 30 DENV. J. INT'L L. & POL'Y 421, 422–24 (2002); Howard E. Kass, *Cabotage and Control: Bringing 1938 U.S. Aviation Policy into the Jet Age*, 26 CASE W. RES. J. INT'L L. 143 (1994); HAVEL, *supra* note 14, at 62. For a review of the safety and environmental problems created by "flags of convenience" in the maritime trade, see Dempsey, *supra* note 16, at 471 n.56.

[21] For example, the United Arab Emirates heavily subsidizes its airlines to diversify its economy: "We want the UAE to sustain its drive toward economic diversification, as this is the nation's surest path to sustainable development in a future that is less reliant on oil. This means expanding new strategic sectors to channel our energies into industries and services where we can build a long-term competitive advantage." UNITED ARAB EMIRATES, UAE VISION 2021, sec. 3.2 (undated), *at* http://www.vision2021.ae/en.

[22] *See, e.g.*, Dempsey, *supra* note 19, at 432.

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traffic to heavily subsidized Middle Eastern airlines (e.g., Emirates, Etihad, and Qatar Airlines), the authors conclude, quoting Nobel economist Paul Krugman, that the "best policy response to foreign State subsidies is 'to send a thank-you note to the [local] embassy'" (p. 120). Apparently, if consumers enjoy lower fares, it matters not that their national airlines go bankrupt. Paradoxically, the authors also advocate sweeping airlines under the jurisdiction of the World Trade Organization (WTO), which would require most-favored-nation treatment in air traffic rights (pp. 71, 110–12); yet the WTO also is equipped to tackle below-cost dumping by authorizing countervailing duties, the antithesis of a thank-you note.

The Chicago Convention of 1944 lists eleven jurisdictional areas to which ICAO is instructed to devote itself, mostly focusing on safety and navigation.[23] Yet, since its creation, as air transport has grown and evolved, ICAO has addressed other areas not explicitly listed therein, including, for example, the promulgation of wholly new standards and recommended practices [SARPs] related to environmental and security issues in Chicago Convention Annexes 16 and 17, respectively.[24] Havel and Sanchez assert that ICAO's exertion of jurisdiction over environmental issues (e.g., aircraft noise and emissions) lacks "any sound textual basis in the Convention" (p. 57). This reviewer, however, takes the view that the Convention is sufficiently broad to permit such jurisdictional assertions, as it explicitly provides that, in addition to those matters specifically enumerated, ICAO may promulgate SARPs related to "such other matters concerned with the safety, regularity, and efficiency of air navigation as may from time to time appear appropriate."[25] This provision manifestly reflects the view that the drafters of the Chicago Convention could not anticipate all the issues that would befall aviation in the ensuing decades, such as aerial terrorism and environmental harm, concerns not on the radar screen in 1944. Moreover, in the Kyoto Protocol of 1997, ICAO's jurisdiction over aircraft emissions was affirmed.[26]

Clearly, ICAO has had less success in overcoming state sovereignty on the issue of aircraft emissions.[27] The European Union's rather clumsy effort to unilaterally impose an emissions trading system on all airlines serving EU airports in a way that impinged on the territorial sovereignty of non-EU states was met with vigorous opposition, forcing the European Union to retreat in 2012 (p. 218).[28] Though the European Union has retreated, ICAO has as yet been unable to fill the void. Suggesting that ICAO has been subject to "regulatory capture of their agenda by the industries they represent" (p. 226),[29] Havel and Sanchez observe that

> ICAO has [been unable to produce] a workable road map for the industry's approach to climate change. Nor has the Organization itself been able to engineer a global sectoral approach to cutting aviation emissions despite being charged to do so by both the U.N. multilateral treaty on global climate change and by its own membership. (P. 218)[30]

[23] Chicago Convention, *supra* note 8, Art. 37.

[24] ICAO, Chicago Convention Annex 16, vol. I (Aircraft Noise), effective Aug. 2, 1971, *available at* store1.icao.int; ICAO, Chicago Convention Annex 17 (Security), effective Mar. 22, 1974, *available at* store1.icao.int.

[25] Chicago Convention, *supra* note 8, Art. 37.

[26] Kyoto Protocol Article 2(2) provides, inter alia: "The Parties included in Annex I . . . shall pursue limitation or reduction of emissions of greenhouse gases not controlled by the Montreal Protocol from aviation and marine bunker fuels, working through the International Civil Aviation Organization and the International Maritime Organization, respectively." Kyoto Protocol to the United Nations Framework Convention on Climate Change, Art. 2(2), Dec. 11, 1997, 2303 UNTS 148, 37 ILM 22 (1998), *available at* http://unfccc.int/resource/docs/convkp/kpeng.pdf.

[27] *See* Rachel F. Rosenfeld, Note, *The European Union Aviation Directive and U.S. Resistance: A Deadlock on Aviation Emissions Control*, 25 GEO. INT'L ENVTL. L. REV. 589 (2013).

[28] *See also* Melle Bakker, *Including Aviation in the European Union Scheme for Emission Allowance Trading: Stimulating Global Market-Based Measures*, 80 J. AIR L. & COM. 3, 8, 13 (2015).

[29] Actually, ICAO represents the interests of member states, which are often divergent from the interests of the airline industry.

[30] According to the authors, ICAO's "'legislative' effectiveness has been put in doubt by its inability to deliver a workable multilateral treaty to mitigate the aviation industry's carbon footprint" (p. 188).

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Ultimately, ICAO cannot do anything that its member states do not want.[31] No international organization can. If heads of state fail to agree as to how to arrest global warming, air transport ministers or foreign service diplomats serving on the ICAO Council or General Assembly can do no better. The ICAO General Assembly has commissioned the ICAO Council to develop a global-market-based-measures scheme by 2016. It will succeed only if its member states agree.

Havel and Sanchez lament the fact that ICAO "possesses no *direct* powers . . . to punish or demand compliance from recalcitrant States" (p. 61). This statement reflects a confusion of the respective functions of domestic and international law. Under domestic law, the sovereign has corps of police, jails, courts, and prisons to coerce and punish those who violate his or her edicts. But in international law, no equivalent institutions exist. Outside of the powers held by the UN Security Council to exert force against states that violate international law, no UN agency has unrestricted power to punish an errant state. Global governance instead works in a system of compliance, rather than enforcement.[32] Nonetheless, the Chicago Convention has an embedded enforcement mechanism; where a state fails to comply with SARPs, other states are not obliged to recognize its airlines' certificates of airworthiness.[33] Both the United States and the European Union have imposed restrictions on air service from states that do not comply with SARPs.[34] What ICAO has been given is rather unprecedented among international organizations: the power to audit state compliance with Chicago Convention annexes, and the authority to publish the audit results.

True, the ICAO Council has authority to resolve complaints between states on interpretations of the Chicago Convention.[35] Violations of its decision may result in a state's airlines being denied authority to cross through the airspace of contracting states[36] and may result in suspension of the state's voting power in the Council and General Assembly.[37] But these sanctions have never been imposed because, although several complaints have been filed, the Council has never reached a decision on the merits.[38] It instead has resolved disputes through informal mediation through the good offices of the president of the Council.[39]

The book is a good read and a comprehensive overview of the major legal and policy issues of the day. It explains the jurisdiction and role of ICAO, market restrictions, safety, security, environmental issues, tort liability, and aircraft finance. It is the only book that addresses all of these issues, and it is a relatively up-to-date portrait of a complex and textured landscape. Though the book is more about "law and policy" than conveyed by its title *Principles and Practice*, between the covers the language is crisp, clever, and creative. Except arguably for the last chapter on aircraft finance, this book is not "how-to" manual for aviation practitioners;

[31] *See* Nicolas Mateesco Matte, *The Chicago Convention—Where from and Where to, ICAO?*, 19(1) ANNALS OF AIR & SPACE L. 371, 394 (1994).

[32] *See, e.g.*, Paul Stephen Dempsey, *Compliance & Enforcement in International Law: Achieving Global Uniformity in Aviation Safety*, 30 N.C. J. INT'L L. & COM. REG. 1 (2004); Emmanuelle Jouannet, *What Is the Use of International Law? International Law as a 21st Century Guardian of Welfare*, 28 MICH. J. INT'L L. 815 (2007); José E. Alvarez, *Governing the World: International Organizations as Lawmakers*, 31 SUFFOLK TRANSNAT'L L. REV. 591 (2008).

[33] Chicago Convention, *supra* note 8, Art. 33; *see* PAUL STEPHEN DEMPSEY, PUBLIC INTERNATIONAL AIR LAW 74, 79 (2008).

[34] DEMPSEY, *supra* note 33, at 90–101.

[35] Chicago Convention, *supra* note 8, Art. 84.

[36] *Id.*, Art. 87.

[37] *Id.*, Art. 88. Havel and Sanchez maintain that the loss of voting power would jeopardize the interests of the delinquent state because, in promulgating SARPs, "new rules can take effect for every member State unless a majority of States rejects them" (p. 65). This analysis is rigidly doctrinal and ignores the practical reality. Though the Chicago Convention enables a majority of member states to veto a proposed SARP, they have never exercised it, and likely never will, inasmuch as proposed SARPs are circulated and vetted extensively for state comment, a process that can take two years or longer; only when a consensus is reached are they finalized with a two-thirds vote of the Council. *See* DEMPSEY, *supra* note 33, at 76.

[38] Paul Stephen Dempsey, *Flights of Fancy and Fights of Fury: Arbitration and Adjudication of Commercial and Political Disputes in International Aviation*, 32 GA. J. INT'L & COMP. L. 231, 271 (2004).

[39] *See* ASSAD KOTAITE, MY MEMOIRS: 50 YEARS OF INTERNATIONAL DIPLOMACY AND CONCILIATION IN AVIATION (2014).

nonetheless, it should be very useful for policy makers, teachers, students, and others involved in or seeking to understand the field. The book is well organized and full of facts supporting the authors' hypotheses. Though this reviewer may disagree with some of the policy initiatives proffered, he salutes Havel and Sanchez for their important contribution to the literature.

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