Sovereignty and Jurisdiction in the Airspace and Outer Space Legal Criteria for Spatial Delimitation;

Oduntan, Gbenga; Routledge Research in International Law; Abingdon; Routledge; 2012; 408 pages; £95; Hardback; ISBN 978-0-415-56212-6.

The legal concepts of sovereignty and jurisdiction, particularly with regards to outer space law, are extensive and often debated. Oduntan acknowledges this from the very beginning, noting that his book:

does not, and cannot, examine all the areas in which the legal concepts of sovereignty and jurisdiction have relevance. The legal and semantic senses of sovereignty jurisdiction in law are too numerous to be meaningfully treated in any single volume and there will be little merit in attempting to do so (p. 3).

Instead, his intentions with this book are:

to synthesise the divergent positions as found in all forms of international territories into a single, consistent legal theory, which would not only satisfy air lawyers and space lawyers, on the one hand, but also bridge the perennial divide between developing and developed states on the issue, on the other (p. 6).

Consequently, Oduntan is forced to limit his analysis to the specific areas, of sovereignty and jurisdiction in airspace and outer space law. The result is a series of brief – but nevertheless critical and thorough – treatments of issues ranging from crimes committed on aircraft to the possibility (or absence thereof) for ownership of outer space and its celestial bodies. This book is situated within a field of literature dealing with outer space law including, but not limited to, authors such as Cheng (1997), Christol (1982), Fawcett (1984) and Lachs (1972).

After briefly accounting for the legal terminologies of jurisdiction and sovereignty and their relationship with territory in the opening chapter, the first part of the book (chapters 2-5) concentrates upon airspace law. Oduntan summarises the application of jurisdiction and sovereignty to aircraft and airspace, both within the territorial boundaries of states and over the high seas. In doing so, he looks at issues of state jurisdiction over crimes committed on aircraft, from fairly petty crimes to more serious ones, such as hijacking. The author goes on to analyse jurisdiction in the airspace over what he terms ‘international spaces’, where he acknowledges that existing international law is inclusive of the airspace over international spaces, as regulated by International Civil Aviation Organisation, though suggesting that “[i]t may, however, be necessary that a law of international spaces be developed […] to settle finally all controversies over the legal status of international airspace” (p. 146). Finally, with regards to airspace, Oduntan turns in chapter five to the sovereignty of national airspaces and examples of both accidental and intentional transgressions; from military trespassing, to incidents of civilian airliners’ occasional (and sometimes tragic) intrusions into a state’s airspace. Oduntan refers to numerous examples of trespasses, noting that regardless of whether the offending aircraft is civilian or military, states have historically considered any transgression of their aerial sovereignty “with equal seriousness” (p. 158). The chapter ends with a brief treatment of no-fly zones, of which the author is particularly critical in relation to their impingement of territorial sovereignty.

The second part (chapters 6-10) of the book focuses upon outer space. Oduntan begins by expelling any suggestion that sovereignty bears relevance to the domain (p. 174), choosing instead to concentrate upon jurisdiction and control. The author then proceeds to summarise and analyse the Common Heritage of Mankind principle and its application with regards to outer space and its celestial bodies, before turning to the legality of common ownership and jurisdiction over persons and spacecraft in the domain. To conclude the focus on outer space, Oduntan looks at a number of threats to the current legal regime of outer space, including the possibility of weaponisation, extra-terrestrial remote-sensing and space tourism.
Oduntan concludes with a penultimate chapter attempting to identify the spatial location where airspace ends and outer space begins. He proceeds to critically analyse existing academic and legal debate on the topic, before suggesting a demarcation limiting territorial sovereign airspace to 55 miles, with a 45 mile high ‘buffer zone’ before outer space ‘begins’ at a height of 100 miles above sea level (pp. 310-311). This penultimate chapter acts as a microcosm of the comparisons between airspace and outer space law present in the rest of the book: while there is an obvious need to differentiate between two legal regimes which relate to domains with very different physical properties, Oduntan’s approach nevertheless highlights numerous similarities which offer insight into how outer space law may mature in the future, an example being possible changes to the registration of space stations (p. 265).

Although Oduntan explicitly attempts to escape from a study of international law heavily influenced by political realities and current events, in the process restoring some political objectivity (p. 6), his approach is arguably inconsistent. At times there is evidence of an optimism belying the political realities, an example being his dismissal of claims relating to the ineffectiveness of the Moon Treaty (p. 202, note 633), while at others he pays close attention to state actions and opinions, presenting them as suggestive of existing legal norms, such as with regards to the legal status of aerospace objects (pp. 250-253). This is not to deny that political objectivity in international law is a worthwhile ambition; rather that the inconsistencies which emerge in Oduntan’s arguments suggest that the aforementioned ambition remains, for the time being at least, sadly out of reach.

Perhaps surprisingly, one of the most significant weaknesses of Oduntan’s argument pertains to a failure to discriminate between the militarisation and weaponisation of outer space, and indeed it appears he uses the terms interchangeably (p. 268). For a book which focuses heavily on vocabulary and legal nuances, the absence of any acknowledgement of the militarisation/weaponisation debate is noteworthy. Furthermore, Oduntan’s use of the term “military space missions” (p. 267) appears to be limited to space-based weapons capable of enabling space control doctrines, rather than including dual-use satellites which have the capability to assist terrestrial military operations.

Whilst clearly a legal text, the clarity of the prose means that both lawyers and international relations scholars will be able to benefit from Oduntan’s critical analysis and extensive literature review, although a familiarity with public international law will undoubtedly assist readers. Despite the weaknesses described above, the book remains a broad, yet thorough, analysis of the current airspace and outer space legal regimes and, unlike many other works on this topic, actively attempts to offer a solution to the absence of a demarcation between airspace and outer space.

Bibliography