

craft whilst the matter of its legal status is in abeyance" (p. 151).

Goedhart recognizes that, depending on the territorial circumstances of launching states, spacecraft may need to transit foreign territories either on launch or return to earth following orbital activity. He favors a right of "innocent passage" for traditional spacecraft at the time of launch, pursuant to the provisions on freedom of access to outer space of the 1967 Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Including the Moon and Other Celestial Bodies.² His analysis of customary international law provides the basis for his view that newly launched space objects returning from orbit may transit at low elevations across non-national territory.

New questions will be raised, however, when new technologies come on line. For example, the boundary-oriented sources that Goedhart consulted were, with few exceptions, published between 1951 and 1990 and do not take into account such developments as the hybrid aerospace plane, which, when fully operational, will be entirely maneuverable as it transits airspace and beyond. Assuming, as some do, that separate legal systems for airspace and outer space should be preserved, launching states will need to identify the activities that a hybrid plane will perform in airspace—i.e., before entering into orbit—and those to be engaged in after entering orbit. In theory, this notification by the launching state, coupled with the sophisticated monitoring capabilities now in use, will permit application of the appropriate legal regime. Operational experience may then suggest acceptable boundaries, which could be confirmed in a formal undertaking.

Goedhart's assertions of the need for a formal air-space boundary are not necessarily convincing. Discussions over the past ten years at the Committee on the Peaceful Uses of Outer Space reveal collective doubt that there is a "clear scientific basis for fixing at a particular altitude the demarcation between airspace and outer space."³ The subject remains on the Legal Subcommittee's agenda.⁴ Furthermore, space-re-

source states have urged that, until future scientific and technological developments have been appraised, a premature fixing of the boundary could impede the development of space activities. Even Goedhart accepts that a boundary identifying the limits of national sovereignty is not required for security purposes.

Goedhart's work possesses considerable merit. His identification and assessment of historic proposals is useful. He has created in a logical way the opportunity to raise questions, which may, for better or worse, provide additional insights on the boundary issue. Since Goedhart seeks ways to bring to closure a "never-ending dispute," perhaps, in view of the difficulties attendant on obtaining a formal agreement, he would accept this phrasing: "setting the boundary between airspace and outer space is a matter where law and practical needs are being resolved informally."

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Die völkerrechtliche Praxis der Donaumonarchie von 1859 bis 1918: Eine Auswahl von Dokumenten (Vols. 1 & 2) (International Legal Practice of the Austro-Hungarian Monarchy from 1859 to 1918: A Collection of Documents). Edited by Stephan Verosta and Ignaz Seidl-Hohenveldern. Vienna: Verlag der Österreichischen Akademie der Wissenschaften, 1996. Pp. xxv, 665. Indices. DM 341.

In the same way that Vienna's imperial architecture testifies to the former greatness of the Austro-Hungarian monarchy, this collection of legal documents is a monument to Austria's contribution to international law from the middle of the nineteenth century to the end of World War I, which also marked the end of Austria as a great power. The work is a late descendant of the family of *Digests* of international law as established by Francis Wharton and John Bassett Moore.

The two-volume set is the result of seventeen years of work undertaken under the auspices of the Commission for Public International Law and International Relations of the Austrian Academy of Science and guided by two of Austria's most renowned scholars of international law, Professors Stephan Verosta and Ignaz Seidl-Hohenveldern. They were assisted mostly by former members of

² Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, Jan. 27, 1967, 18 UST 2410, 610 UNTS 205 (entered into force Oct. 10, 1967).

³ Report of the Legal Sub-committee, Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/386 (1986).

⁴ See Report of the Legal Sub-committee, Committee on the Peaceful Uses of Outer Space, UN Doc.

A/AC.105/607 (1995); Report of the Legal Sub-committee, Committee on the Peaceful Uses of Outer Space, UN Doc. A/AC.105/639 (1996).

the Austrian civil service, in particular the Foreign Ministry. The 740 documents fully or partly reprinted in this collection are taken almost entirely from the archives of the Ministry of the Imperial and Royal House and Foreign Affairs, which today are part of the Haus-, Hof- und Staatsarchiv in Vienna. Accordingly, the reader primarily finds diplomatic correspondence, orders and instructions issued by the Foreign Ministry, as well as internal memoranda; judicial decisions and writings of jurists are not included. The editors estimate that about seven thousand boxes of papers, each comprising between five hundred and a thousand pages, had to be looked through in order to produce these sources (p. xxiii). Most of the documents, and the valuable accompanying historical introductions and comments provided by the editors, are in German; a few sources are in French or English.

The documents have been organized according to a fifteen-part scheme proposed by a committee of experts of the Council of Europe in 1970 to cover the following fields: international law (conception and foundation); sources of international law; subjects of international law; position of individuals in international law; organs of the states for their international relations; the law of treaties; jurisdiction over nationals residing in foreign states; state territory; the high seas and waterways; the air; responsibility of states; preservation of peace; application of force in times of peace; war; and neutrality. In general, and astonishingly, the material fits well into this scheme, suggesting that the established system of international law as reflected in the tables of contents of most contemporary treatises is still based on views and ideas of the nineteenth century. There are only a few anachronisms, such as the classification of the Concert of Europe as a "subject of international law" (pp. 152–65).

Since it presents the international legal practice of a perished state and an era long past, the collection must serve a different purpose from that of the various American *Digests* and the reports of contemporary state practice published by international law journals. It will be welcomed primarily by the rather small community of those interested in the history of international law. Others who will benefit from the material include scholars who are tracing the development of a particular institution, like the recognition of governments (pp. 68–82) or international arbitration (pp. 511–19), or are simply looking for a good historical example of a certain practice.

There are also wonderful quotations, like the comment by Lord Stanley, the British Foreign Secretary, when asked, in 1866, to intervene on behalf of Austria in its conflict with Prussia, which the Viennese Government had accused of having broken the most solemn treaties. "C'est bien triste," Lord Stanley responded, "mais ce n'est pas nous qui avons fait cette situation. D'ailleurs les intérêts et les aspirations des peuples changent avec les époques et les traités ne sont jamais faits pour l'éternité" (p. 4).¹ It is not far-fetched to presume that quite the same is declared, one way or another, in many a secret meeting of our days. Some governments will also still agree with a statement made in 1859 by Austrian Foreign Minister Count Buol with regard to Austria's influence on the Italian states: "[I]l est dans la nature des choses que de grands corps politiques seront toujours appelés à exercer une certaine influence sur les Etats qui les avoisinent" (p. 39).²

It seems that, in comparison with the United States, Austria was less challenged by legal issues, or preferred to deal with them in a political way. In any case, the documents generally deal with a number of unrelated incidents, and are rarely evidence of a continuous practice with regard to a particular question. According to the editors, 3,000 relevant documents were originally retrieved from the archives, but only 740 could be published owing to financial constraints (p. xxv). Perhaps this missing material would have demonstrated a more consistent practice, rendering the collection more meaningful from a legal point of view. It is regrettable that it was not possible to finance the publication of all the documents once the strenuous work of locating them had already been done.³

Inis Claude suggests that the Concert of Europe, inaugurated on Napoleon's defeat as a means of maintaining the balance of power in Europe, "produced the prototype of a major

¹ "That's too bad, but it's not we who have produced this situation. Besides, the interests and aspirations of peoples change with the times, and treaties are never written for eternity" (editor's translation).

² "Naturally, great countries are always called upon to exert a certain influence on the states on which they border" (editor's translation).

³ In contrast, the recently published third series of *La prassi italiana di diritto internazionale* (The Italian Practice of International Law) devotes seven volumes just to the years 1919–1925. See Tullio Treves, Book Review, 90 AJIL 715 (1996).

organ of modern international organization—the executive council of the great powers.”⁴ From this perspective, the documents of these deliberations are of more than historical importance. The present collection, benefiting from the previous work of one of the editors,⁵ includes a wealth of material about the Concert of Europe, its structure, and its efforts to maintain and restore peace (pp. 152–65, 459–511 and 523–58; pages 163–65 set forth a chronology of its activities). Other sections illustrate especially notable contributions of the Dual Monarchy to the law of nations, such as its peculiar constitution as a Real Union⁶ (pp. 83–88), its treatment of national minorities, and its constant involvement in the Balkans.

Thanks to Verosta, the *spiritus rector* of this edition, the role that Austria-Hungary played in the formation and practice of international law has been rescued from oblivion. Many of the problems faced by Austria-Hungary as a multinational state have gained new importance in post-Cold War Europe. This reviewer would encourage the Austrian Academy of Science to continue the publication of historical international legal documents. A volume covering the breakup of the Dual Monarchy in 1918 and the following years, for instance, would probably provide highly interesting material about a whole range of problems of state succession.

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⁴ INIS L. CLAUDE, JR., *SWORDS INTO PLOWSHARES: THE PROBLEMS AND PROGRESS OF INTERNATIONAL ORGANIZATION* 28 (4th ed. 1971).

⁵ See STEPHAN VEROSTA, *KOLLEKTIVAKTIONEN DER MÄCHTE DES EUROPÄISCHEN KONZERTS, 1886–1914* (Collective Measures Taken by the Powers of the Concert of Europe, 1886–1914) (1988).

⁶ According to Oppenheim/Lauterpacht:

A Real Union is in existence when two sovereign States are, by an international treaty, recognised by other Powers, linked together for ever under the same monarch, so that they make one and the same International Person. A Real Union is not itself a State, but merely a union of two full sovereign States which together make one single but composite International Person. . . . At present there is no Real Union in existence, that of Sweden-Norway having been dissolved in 1905, and that of Austria-Hungary having come to an end by the collapse of the Austro-Hungarian Empire in 1918

1 LASSA F. L. OPPENHEIM, *INTERNATIONAL LAW* 171–73 (Hersch Lauterpacht ed., 8th ed. 1955) (citations omitted).

Cumulative Digest of United States Practice in International Law 1981–1988 (3 vols.). Edited by Marian Nash (Leich). Washington: Office of the Legal Adviser, Department of State, 1993–95. Pp. xvi, 1311; xviii, 1312–2751; xiv, 2753–3845. Index. Vol. 1, out of print; Vol. 2, \$51; Vol. 3, \$48.

Belated words of welcome are in order for the publication of this, the latest *Digest* of United States practice in international law published by the Office of the Legal Adviser, Department of State. The series enjoys an impressive heritage, distinguished for over a century by the periodically issued, multivolume surveys compiled by Francis Wharton (1886), John Bassett Moore (1906), Green Hackworth (1940–1943) and Marjorie Whiteman (1963–1971). These surveys covered the entire range of international law, emphasizing United States practice and justifications of its practice, but often as countered by informative responses from foreign governments. It would be difficult to overestimate the contribution these surveys have made to the development of customary law.

Following publication of Whiteman's *Digest*, the Legal Adviser's Office decided to replace the existing format with single-volume annual digests confined to U.S. practice. Carlyle E. Maw, the Legal Adviser at the time, explained that the change in format was made in response to a strong demand among officials of governments and international organizations, attorneys, and legal scholars “for a continuous flow of the latest available materials,” in light of the “extraordinarily rapid development and change in the structure and substance of international law” (1973 *Digest*, p. iii).

In itself, inauguration of annual digests did not necessarily imply abandonment of the traditional cumulative, multivolume format. In fact, in his introduction to *Cumulative Digest 1981–1988*, Conrad K. Harper, the Legal Adviser from 1993 to 1996, recounts that it was expected initially that a multivolume digest along traditional lines would be undertaken in ten or fifteen years (p. iii). “Coverage of a period of years would permit a more selective choice of subject matter; some materials could be condensed, some discarded, and some, particularly from the Executive branch, included for the first time,” Harper notes (*id.*).

However, subsequent developments caused the Legal Adviser's Office to abandon plans for a multivolume digest. Mr. Harper cites three factors in particular: first, the advent of the legal information explosion made laws, regulations and court