In 1964, Canada faced domestically something similar to what is now a common international problem – the competing claims and interests of large airlines. The Government decided that the international air services provided by Canadian airlines should be integrated into a single plan which would avoid unnecessary competition or conflict. This means that, outside Canada, neither of our two major airlines (Air Canada and Canadian Pacific Airlines) serves any point served by the other. The Government also made it clear that any development of competition in domestic mainline services must not put the Government airline..."into the red". In addition, Canadian regional air carriers were given an enlarged role in relation to domestic mainline carriers. The application of these three principles has strengthened Canada's position in world aviation. For instance, since 1964 there have been successful negotiations with several countries, designed to achieve international route extensions and improvements for both Air Canada and Canadian Pacific Airlines.

Projecting this domestic example onto the international scene, would be to suggest that perhaps the logical course for public and private international air law is in the direction advocated by the late John Cobb Cooper, the first Director of the then McGill Institute of International Air Law, of one set of rules to govern all flights at whatever altitude.

LAW AND OUTER SPACE

If international air law is to abandon the techniques of bilateral negotiation, with its jungle of complicated agreements based on the narrow application of national sovereign rights, then it could probably take a lesson from developments in the law of outer space. A new frontier for the law of the air figuratively and literally lies at the fringe of outer space. In 1963, the UN Declaration of Legal Principles Governing Activities by States in the Exploration and Use of Outer Space, marked the end of the speculative phase in which the "general pundits" conjectured on whether certain maritime and air law principles of national sovereignty and freedom of the seas were applicable in outer space. Events since then, such as the recent Outer Space Treaty, suggest that a new legal order is emerging – that of the world community acting for the common good and welfare of all mankind.

The main provisions of the outer-space treaty are that outer space, the moon and other celestial bodies shall be explored and used for peaceful purposes only. Like the Limited Test Ban Agreement of 1963, it is part of a series of international agreements leading towards general and complete disarmament. Hopefully, more agreements are on the way – a non-proliferation treaty and, interestingly, an item now before the General Assembly calling for a treaty on the peaceful use of the sea-bed and the ocean-floor and their resources in the interests of mankind. First outer space, now the sea-bed and ocean-floor. What environment will be next? Air space? What a blessing it would be if by universal agreement the use of the air were reserved exclusively for peaceful purposes, in the common interest of all men....

FACTORS REQUIRING LEGISLATION

Let us look for a moment at a few problems which will require international legal action. A major problem facing us all in this machine age is noise. We are continually bombarded with noise, and despite our increasingly elastic thresholds of tolerance, jet aircraft have multiplied this attendant disturbance to the point of nuisance. Unless there are some major technological improvements, the larger and faster jets with their greater power take-offs and shallower landing paths will compound this problem. There are several possible solutions: airport curfews, to enable some quiet periods; relocation of airports and runways and restrictions on building near them; and better insulation of dwellings and offices – but each of these national solutions will require some kind of international agreement to be made completely effective. I hope that the fifth Air Navigation Conference of ICAO (the International Civil Aviation Organization) starting in Montreal soon, will succeed in agreeing on an international standard unit for noise measurement as the first step towards an international agreement on aircraft noise. Perhaps international air lawyers could then produce regulations and provisions for their world-wide enforcement. The time may come when all new aircraft will be required to demonstrate that they do not exceed a set of internationally-accepted noise levels.

One of the agreements signed at Chicago was the International Air Services Transit Agreement – commonly known as "the two freedoms agreement" – in which freedom of mutual overflight was guaranteed. Such flights, if at supersonic speeds, promise to disturb and annoy those on the ground under the SST's flight path. Consequently, if overflight is to be permitted, international agreements will have to be reached on the level of the noise from the sonic boom to be tolerated.

Domestically, old common-law conceptions of property ownership from the soil upwards *usque-ad coelum*, have been limited legislatively and judicially to meet the requirements of country-wide air travel. To have recognized private claims to air space would have interfered with development of aviation in the public interest. The extent to which airlines will be able to take advantage of technological progress in aviation, will depend upon the willingness of countries to exchange "freedom of the air" on a multilateral basis.

Another specific problem is that of liability. In 1965, the United States denounced certain provisions of the Warsaw Convention of 1929 limiting the liability of air carriers for personal injury or death of passengers in international air carriage. This denunciation was withdrawn last year when most of the world's major airlines entered into an agreement in which they accepted considerably increased limits of passenger liability. It would not seem advisable, however, that a matter of this nature, which is really one of governmental responsibility, should continue to function for too long as an agreement between carriers. It is time some fresh attempts were made to draft new protocols perhaps introducing some flexibility in the amount of the limits of liability....

(Continued on P. 6)