

LEGAL STATUS OF GOVERNMENT MERCHANT SHIPS IN INTERNATIONAL LAW.
By Thamarappallil Kochu Thommen. [The Hague: Martinus Nijhoff.
1962. xll + 177 pp. (inc. bibliography and index). D. fl. 21.50]

Dr. T. Kochu Thommen's book is a monography very carefully written on a subject which, — owing to the increasing number of state-owned or operated merchant vessels, — is of special interest not only for the theory, but also for the practice of international law. The author has consulted a large number of authorities, he quotes or presents a great variety of cases of the judicial or administrative practice of various states and treats multilateral international conventions relating to the subject. This study is a useful work for both theory and practice as it gives a systematic review of existing opinions and judicial decisions and doctrines, new trends, frequently presenting very interesting and subtle analyses. After having drawn his conclusions, the author made some suggestions how some problems of international concern could be solved.

The book is divided into five chapters: I Government Ships and their Status in International Law, II Jurisdiction over Foreign Merchant Ships, III Illustrations from Case Law and State Practice, IV Conventions, and V Conclusions.

The author shows the origin and development of the doctrine of absolute immunity and the tendencies leading to the doctrine of restricted immunity, emphasizing the spreading of the view that state owned or operated merchant vessels are not to enjoy immunity from jurisdiction of foreign states. He points out the difficulties in distinguishing state commercial vessels from state non-commercial vessels, the usual criterion being whether an act of *iure gestionis* or of *iure imperil* of the state is in question. No international standard determines when a vessel, and specially a state vessel is to be considered a merchant vessel (whether all state vessels which are not military vessels should be considered merchant vessels, whether the commercial purpose of the ship, or the character of the actual operation should be considered decisive etc.). That is why this very controversial question is left to various national courts, which again leads to divergencies causing uncertainty.

The presentation of the whole matter, as well as of the particular questions is done very clearly and the various points of views are illustrated by adequate opinions of authorities, quotations and analyses of cases. The problems are pointed out very efficiently. True, repetitions can be found sometimes, but they mostly result from the wish of the author to give as clear a presentation of the case as possible, sometimes even at the expense of a strict respect for the frames of his chapters. The author succeeds in providing a comprehensive presentation of the whole complicated subject-matter of state owned and operated ships and specially that of state merchant ships.

It is evident that the author has considered as his principal task to review the history, present state, the problems and the tendencies and trends of the matter under consideration (this is done in 137 pages of the book) but he has added at the end some suggestions (the last 6 pages) how, in his opinion, the existing difficulties could be solved.

These suggestions might be summed up in the following: state merchant ships should be defined in a negative way by determining when a nonmilitary state ship is not to be considered a merchant ship, in all other cases it should be treated like any private merchant ship. The exceptions when immunity should be granted to a nonmilitary state ship are the cases when a ship owned or operated by a state is used only in the service of the police or customs or for carrying the Head of State and his suite. All nonmilitary ships which are specially authorized by their state to seize private ships or to undertake hot pursuits of foreign vessels should be given the same status as police ships.

It seems that these suggestions, based on very clear but somewhat formal criteria, go much too far. They not only cannot be accepted by states which acknowledge the doctrine of absolute immunity, but they are even hardly acceptable to those which are applying the doctrine of restricted immunity. According to these suggestions, *e.g.* a state vessel engaged usually in commercial operations, should be denied immunity even in case it carries exclusively ammunition and troops for pure public, noncommercial purposes of its State. On the other hand, it seems that any state could secure immunity even to its state merchant vessels by providing them with authority to seize pirate vessels or exercise hot pursuit, regardless of whether such vessel might possibly perform such actions or is always used only for commercial purposes.

Finally it is to be regretted that in a book of such high qualities no attention has been given to the examination of terminology as to the choice of the right term for the denomination of ships owned or operated by the state. It seems to be questionable whether the term "government ship" used by the author through the whole work is the most adequate one. Even studies written in the English language do not use for such ships exclusively the term "government ship" but are also using other terms like "public vessel", "state ship" (these expressions even appear in various quotations in the book itself, *e.g.* on pages 11, 32, 35, and 36), "state commissioned vessel" etc; in French the terms used are "navire d'Etat" and "navire public", in Russian "gosudarstvennoe sudno", in German "Staatsschiff".

Although we cannot always agree with all the conclusions and suggestions of the author, we have to appreciate the excellent work done by showing in a very comprehensive way, in a clear, systematic and versatile review all the aspects of the problem.

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