

1967

Book Reviews

Imre Csabafi

Warren L. Sharfman

Follow this and additional works at: <https://scholar.smu.edu/jalc>

Recommended Citation

Imre Csabafi et al., *Book Reviews*, 33 J. AIR L. & COM. 506 (1967)
<https://scholar.smu.edu/jalc/vol33/iss3/5>

This Book Review is brought to you for free and open access by the Law Journals at SMU Scholar. It has been accepted for inclusion in Journal of Air Law and Commerce by an authorized administrator of SMU Scholar. For more information, please visit <http://digitalrepository.smu.edu>.

BOOK REVIEWS

A NEMZETKOZI TÉRSÉGEK JOGALLASA (The Legal Status of International Spaces), by Dr. János Kiss (English Summary). KOZDOK, Budapest, 1964, pp. 104.

In his scholarly book Dr. Kiss proposes, as he calls it, "a new theory, the legal status of international spaces." (p. 97) What does Dr. Kiss intend to prove with his book? He answers this question in the preface by saying: "The legal category of international spaces has existed . . . all along . . . but the science of international law has not yet discovered it. Therefore, the main aim of this book is to prove the common legal status and consequently the uniform legal order of international spaces." (English summary p. 98)

The concept of Dr. Kiss's treatise is concerned with the problem of the applicability of certain basic and uniform rules of international law to international spaces. The term "international spaces" is defined by the author—in contradistinction to national spaces—which are subject to national sovereignty—as being the high seas and the polar and cosmic spaces which are governed by the rules of international law.

Chapter I of the volume gives a detailed analysis of the legal status of the high seas. The second and third chapters deal with the legal status of the polar regions (the Arctic and the Antarctic) and that of outer space and celestial bodies respectively. Dr. Kiss sets out in three logical steps the basic concept stated at the outset of his book. The first rule the book sets out states that: "international spaces are subject to international law." (English summary p. 100) This is used as a logical stepping stone leading to the second rule: "international spaces are not subject to national sovereignty." (English summary p. 104) After a scholarly examination of both the common and special rules of international law governing the high seas, the polar regions and outer space respectively, Dr. Kiss deduces the concluding rule saying that: "The high seas, the Arctic, the Antarctic, outer space and celestial bodies are international spaces." (English summary p. 104)

The publisher's obvious aim in the first edition of this book was solely to enable an exploratory inquiry into the fundamentals of this vast subject. This is perhaps the reason why there is no space left for footnotes in the book. Despite this fact, the author's arguments are well documented by the relevant international legal materials appended to the respective chapters of the volume.

The value of the book lies in its genuine vision which leaves an imprint of brilliant perception on the whole treatment of the subject. This book

has undoubtedly set the foundations for a more comprehensive treatise, which, if enhanced with the benefits of a pragmatic approach to the legal problems presented by the increasing uses of international spaces, would be a valuable contribution to the science of international law and would definitely merit publication in English. Such a book is now under preparation by Dr. Kiss of St. John's College, Cambridge.

Dr. Kiss is to be congratulated for the scholarly treatment of the subject. The academic integrity of the book is evidenced by the fact that the author did not substitute sound arguments with easier propagandistic statements.

*Dr. Imre Csabafi**

TRANSPORTATION LAW, by John Guandolo. William C. Brown Company, Dubuque, Iowa, 1965, pp. xix, 839. \$12.00

The field of "transportation law" presents a broad and enduring vista.

Although the author posits a "need" for an "all inclusive book on transportation law," he limits himself to the major regulatory functions of the Interstate Commerce Commission, the Civil Aeronautics Board, and the Federal Maritime Commission. Even such a restricted area is so vast as to require great understanding, restraint, and skill in presentation in order to produce a manageable and lasting reference work.

The "unique approach" adopted by the author was "to divide the book into principal subject headings under which the laws applying to each mode of transportation could be found . . . in contrast with one which would have divided the book into sections treating each agency separately." Although benefits are asserted for such an approach, such benefits are hard to discern. For example, each of the first fifteen chapters deals with the issuance, curtailment, or interpretation of operating authority for direct or indirect carriers in a particular mode of transportation. The principal weakness of the book lies in the fact that no attempt is made to unify these chapters by comparing or contrasting the statutory framework or its application to the particular mode involved. In the absence of an integrated consideration of authorizations to perform transportation services by different modes, there is little reason to organize the volume in this fashion. Moreover, a number of types of authorizations are omitted, and others that are included are treated without sufficient detail.

The presentation of materials throughout the book leaves much to be desired in terms of a reference work of lasting usefulness. In the main, the text of a particular chapter embodies most of the applicable statutory provisions and some of the administrative or judicial determinations relating thereto. The logic of the order of the materials presented is not

* Dr. Jur., Ph.D. (Budapest); LL.M. (McGill University); Candidate for the D.C.L. degree, Institute of Air and Space Law, McGill University, Montreal, Canada.

always evident. Neither the scope of the problems discussed nor the selection of cases relating to them approach the boundaries of full consideration. Ordinary digest and code annotations will provide a more exhaustive, and obviously a more current, view of the problems and their treatment. Nevertheless, such a volume clearly would be justified if it provided an analysis and understanding of the problems, even in limited areas. Unfortunately there is little here to enlighten the reader as to what the future may hold or to provide a background for understanding later administrative or judicial determinations in their relationship to the past. The book may prove useful on the practitioner's shelf in a particular situation, but if it does it will be a stroke of luck.

Warren L. Sharfman

VILAGURJOG (Space Law), by Dr. Gyula Gál (Russian and English Summaries). Közgazdasági és Jogi Könyvkiadó, Budapest, 1964, pp. 366.

This book is the first Hungarian monograph on space law. It also gives an account of the state of the socialist science of space law. Dr. Gál's express aim is to separate the *de lege ferenda* propositions from the *lex lata* which can be deduced from both conventional international law and the general principles of international law with respect to outer space. The approach and style of treatment of the subject is characterized—as Dr. Gál himself phrases it—not by “some kind of cool objectivism,” but by “responsibility for the peace of the whole of mankind.” (p. 6)

The reader's immediate suspicion that he might again by holding a book characterized by a “tendency to slip into the easier path of ready-made political argumentation”¹ was apparently intended to be removed by the author's comment: “[n]aturally we do not want to serve ideological postulations.” (p. 6) This statement is reminiscent of the classical standard of academic objectivity which, as is well known, is rejected by the Marxist ideology in favor of the standard of “party bias.” It is regrettable to observe how difficult it is for a scholar such as Dr. Gál to fulfil such an otherwise natural (under his circumstances, remarkable) commitment, when delicate questions of contemporary outer-space-related problems of power politics come under his scrutiny.

When expressing his personal opinion on matters of space law, Dr. Gál, a noted expert on international air and space law (due to his profession as a company lawyer), enjoys a relatively freer position than do most persons taking part in the politico-legal decision-making process. The author's past writings have earned him academic standing which lends authority to his book.

¹ TUNKIN, XXII SEZD K.P.S.S. I ZADACHI SOVETSKOI NAUKI MEZHDUNARODNOGO PRAVA (The 22d Congress of the CPSU and the Tasks of the Soviet Science of International Law) No. 5 Sovetskoe Gosudarstvo i Pravo 3 (1962).

The volume opens with a brief presentation of well-known facts and data of astronomy, astronautics, and rocketry. A discussion of the structure of the body of space law—the definition of its concept and its sources—is the prelude to the main legal treatise. The concept of space law is defined by the author as “the body of legal rules regulating municipal and international law relations arising in connection with space exploration and uses of outer space and heavenly bodies (space activities) and with the effects of this activity upon the rights of individuals.” (English summary p. 354) Dr. Gál distinguishes between two concepts of space law. Space law in the strict sense includes only interstate legal relations, while space law in the broad sense includes both interstate and intrastate legal relations.³ (pp. 38 ff.) According to Dr. Gál, the *sine qua non* factor of the concept of space law is the cosmic-related “nature” of the activity and not the “scene” where the activity is carried out. The reason for this rather artificial legal construction is an endeavor to legalize the Soviet ICBM and simultaneously maintain the Soviet argument concerning the illegality of military uses of outer space. This intention is clearly brought out by the statement: “Thus the launching of ballistic missiles is not considered a fact coming under space-law relations because—these though reaching the space—are not put on an orbit around the Earth.” (English summary p. 354)

In discussing the sources of space law, Dr. Gál adopts the pattern set by Article 38 of the Statute of the International Court of Justice. The book does not attempt to examine the nature of international space law, and the author bypasses this important theoretical issue simply by stating: “[w]e regard as the inner or substantial source of international space law the will of the ruling classes of the States.” (p. 46) The author correctly expresses the view that not only the two space powers but also the States of the international community participate in the formulation of the international customary law of outer space. Dr. Gál views the space resolutions of the United Nations General Assembly as auxiliary sources (*fons cognoscendi*) of international space law.³

Almost one-third of the book is devoted to the problem of sovereignty in outer space. The meaning of sovereignty over national airspace is analyzed in a detailed manner, and the problem of the delimitation of airspace and outerspace is examined with the numerous relevant theories. The author himself appears to be a partisan of the “functional theory” which is meant to serve practical purposes until the problem of delimitation is solved.⁴

³ The correctness and usefulness of this categorization is questioned by some Hungarian experts.

³ Dr. Gál states that since the formulation of international customary law requires prolonged practice, the *res omnium communis* nature of outer space is the expression of “juridical conviction related to actual circumstances” rather than the existence of a customary rule. In fact, the expressed intention of states (*animus*) to follow a certain usage or principle (*corpus*) did establish the *res omnium communis* status of outer space as a customary rule.

⁴ Dr. Gál correctly states that no customary rule has developed until now concerning the numerical delimitation of airspace and outer space. However, he should have considered the various practical and legal drawbacks entailing the absence of a meaningful division of the two different legal regimes.

Undoubtedly, the best chapters of the volume are those concerned with the legal system of outer space; its *res omnium communis* nature; terrestrial analogies; applicability of international law; freedom of outer space; problems of peaceful uses; the legal status of space vehicles; and specific problems of liability, rescue and return of astronauts and space vehicles in distress, contamination, and space telecommunications. The last chapter, in which space-related intergovernmental and nongovernmental international organizations are discussed, is unsatisfactorily brief.

In general, Dr. Gál's book is scholarly, both in the selection of subjects and its composition. Characterized by lucidity, comprehensiveness, and a sense of academic prudence, the book is worthwhile reading. The author endeavored to discuss space law in the relevant scientific, ideological, and political context. Unfortunately, he could not entirely avoid creating a slight impression of eclecticism as to his original or achieved aims. It may be justifiably assumed that the intentions of both Dr. Gál and the publisher were to express the standpoint of the socialist science of space law at the proper academic level. If this was their intent, then in certain instances the book is lacking a more elaborate presentation of the thesis and anti-thesis put forward by the socialist science of space law as opposed to the western thesis and anti-thesis. The book should have contained more detailed information on genuine "socialist" thought-ways; ideological, political, and legal conditions of space law decision-making; the socialist appraisal of western positions; and the ratio of socialist responses.

Due to the rapid growth of space law, an updated book⁵ by an East-European expert would be interesting. An English publication of Dr. Gál's book would be a valuable contribution to the science of international law if an analytical rather than a merely descriptive approach were used.

*Dr. Imre Csabafi**

⁵ The provision of elementary scientific and technical information in an entire separate chapter, and the inclusion of pictures and illustrations in the book is unfitting for a legal treatise.

* Dr. Jur., Ph.D. (Budapest); LL.M. (McGill University); Candidate for the D.C.L. degree, Institute of Air and Space Law, McGill University, Montreal, Canada.